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800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2012–0561; Airspace Docket No. 12–AEA–7]

RIN 2120–AA66

Amendment of Restricted Area R–6601; Fort A.P. Hill, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action expands the vertical limits and time of designation of restricted area R–6601, Fort A.P. Hill, VA. The U.S. Army requested this action to provide the additional airspace needed to conduct training in high-angle weapons systems employment.

DATES: Effective date 0901 UTC, June 27, 2013.

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

SUPPLEMENTARY INFORMATION:

History

The FAA published in the **Federal Register** a notice of proposed rulemaking to expand the vertical limits and increase the time of designation of restricted area R–6601, Fort A.P. Hill, VA, (77 FR 35308, June 13, 2012). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received.

Discussion of Comments

The Aircraft Owners and Pilots Association (AOPA) was concerned about the impact that expanding the restricted area's vertical limits and the time of designation would have on Instrument Flight Rules (IFR) access to VOR Federal airway V–376, which crosses through the restricted airspace. AOPA asserted that raising the restricted area ceiling from the current 5,000 feet MSL to 9,000 feet MSL would potentially force pilots to deviate from the airway and circumnavigate the area.

The FAA agrees that there could be some impact on the use of V–376, between the altitudes of 5,000 feet MSL and 9,000 feet MSL, when R–6601B and R–6601C are active. However, R–6601B and C are reserved only for high-angle weapons system training operations and the proponent is not planning to use those areas as much as R–6601A. The estimated use of R–6601B and C is 60 days per year, five hours per day. It should be noted that lowering the ceiling of R–6601A from the current 5,000 feet MSL to 4,500 feet MSL opens an additional IFR cardinal altitude at 5,000 feet MSL along V–376 when R–6601B and C are not in use. Additionally, the FAA examined IFR traffic along V–376 and found that nine aircraft per week used the airway at 6,000 feet and 17 per week at 8,000 feet. Given the limited use of R–6601B and C, and the relatively low weekly traffic count, the FAA expects that the impact to users would be minimal.

AOPA was also concerned about three hour increase in the time of designation for R–6601A, combined with the proposed reduction of the advance NOTAM requirement for activation of the airspace from the current 48 hours to 24 hours. AOPA requested that the actual time of use be reevaluated to minimize the impact on the aviation community and that the current advance NOTAM requirement times be retained or increased to give pilots more lead time to properly plan for operations around R–6601.

The current time of designation for R–6601 is ''0700 to 2300.'' This limits the proponent's flexibility when a need arises to extend training beyond 2300. Currently, R–6601 may be activated outside the ''core hours'' by NOTAM, but that NOTAM must be issued 48 hours in advance. Therefore, if, due to circumstances, training is not completed by 2300 the unit is forced to delay, reschedule or cancel the training because it is too late at that point to issue a NOTAM to extend the hours. The three hour extension of the time of designation to 0200 daily is expected to capture most training activities and this would reduce the need to reschedule training days. The proponent has agreed to retain the 48 hour advance NOTAM requirement for all three restricted areas. In addition, the proponent agreed to the addition of the term ''intermittent'' to the time of designation for R–6601B and C to indicate the less frequent usage of those areas. The FAA believes that the impact to general aviation would be slight between the hours of 2300 and 0200.

A Letter of Agreement will be concluded between the FAA controlling agency and the using agency governing operations of the restricted areas and stipulating that the controlling agency can recall the airspace in the event of Severe Weather Avoidance Plan (SWAP) implementation, weather diverts and emergencies.

The Rule

The FAA is amending 14 CFR part 73 to expand the vertical limits and the time of designation for restricted area R–6601, Fort A.P. Hill, VA. R–6601 currently extends from the ''surface to 5,000 feet MSL,'' with a time of designation of ''0700 to 2300 local time daily; other times by NOTAM at least 48 hours in advance.''

The modified restricted airspace extends from the surface up to 9,000 feet MSL and consists of three subareas designated R–6601A, R–6601B and R–6601C. The new R–6601A has the same lateral boundary as the original R–6601. However, the ceiling of R–6601A is lowered by 500 feet to but not including 4,500 feet MSL instead of the current 5,000 feet MSL for the existing restricted area. R–6601B extends from 4,500 feet MSL to but not including 7,500 feet MSL; and R–6601C extends from 7,500 feet MSL to 9,000 feet MSL. Subdividing the airspace in this manner allows the option to activate only that portion of restricted airspace required for training while leaving the remaining airspace available for other users.

R–6601B and R–6601C overlie the boundaries of R–6601A, except at the northeast end where the shared R–6601B and R–6601C boundary is moved southwesterly by approximately ¾ mile from R–6601A's northeastern boundary. This provides a buffer between R–6601B and R–6601C and the centerline of VOR Federal airway V–286, which is located

northeast of the restricted areas (Note: In the NPRM, V–286 was incorrectly identified as V–386).

The time of designation for R–6601A is increased by three hours daily from the current ''0700 to 2300 local time daily,'' to ''0700 to 0200 local time daily.'' The advance NOTAM requirement for activation of R–6601A at other times remains at 48 hours rather than being reduced to 24 hours as proposed in the NPRM. The time of designation for both R–6601B and R–6601C is ''Intermittent by NOTAM at least 48 hours in advance.''

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies restricted area airspace to support military requirements at Fort A.P. Hill, VA.

Environmental Review

In accordance with FAA Order 1050.1E, paragraphs 402 and 404d, the FAA has conducted an independent evaluation of the United States Army's Environmental Assessment for Airspace Modification at Army Garrison Fort A.P. Hill, Bowling Green, Virginia, dated June 2012 (hereinafter the EA) regarding the modification of airspace at Fort A.P. Hill. The FAA adopted the EA and prepared a Finding of No Significant Impact/Record of Decision dated February 2013. The FAA has determined that no significant impacts would occur as a result of the Federal Action and therefore that preparation of an Environmental Impact Statement is not warranted and a Finding of No Significant Impact in accordance with 40 CFR Part 1501.4(e) is appropriate.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Amendment

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

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.66 [Amended]

■ 2. Section 73.66 is amended as follows:

* * * * *

1. R–6601 Fort A.P. Hill, VA [Removed]

2. R–6601A Fort A.P. Hill, VA [New]

Boundaries. Beginning at lat. 38°04′37″ N., long. 77°18′44″ W.; then along U.S. Highway 301; to lat. 38°09′45″ N., long. 77°11′59″ W.; then along U.S. Highway 17; to lat. 38°07′50″ long. 77°08′29″ W.; to lat. 38°05′30″ N., long. 77°09′05″ W.; to lat. 38°04′40″ N., long. 77°10′19″ W.; to lat. 38°03′12″ N., long. 77°09′34″ W.; to lat. 38°02′22″ N., long. 77°11′39″ W.; to lat. 38°02′30″ N., long. 77°14′39″ W.; to lat. 38°01′50″ N., long. 77°16′07″ W.; to lat. 38°02′15″ N., long. 77°18′03″ W.; to lat. 38°02′40″ N., long. 77°18′59″ W.; then to the point of beginning.

Designated altitudes. Surface to but not including 4,500 feet MSL.

Time of Designation. 0700 to 0200 local time daily. Other times by NOTAM at least 48 hours in advance.

Controlling agency. FAA, Potomac TRACON.

Using agency. U.S. Army, Commander, Fort A.P. Hill, VA.

3. R–6601B Fort A.P. Hill, VA [New]

Boundaries. Beginning at lat. 38°04′37″ N., long. Long. 77°18′44″ W.; then along U.S. Highway 301 to lat. 38°09′38″ N., long. 77°12′07″ W.; to lat. 38°07′09″ N., long. 77°08′40″ W.; to lat. 38°05′30″ N., long. 77°09′05″ W.; to lat. 38°04′40″ N., long. 77°10′19″ W.; to lat. 38°03′12″ N., long. 77°09′34″ W.; to lat. 38°02′22″ N., long. 77°11′39″ W.; to lat. 38°02′30″ N., long. 77°14′39″ W.; to lat. 38°01′50″ N., long. 77°16′07″ W.; to lat. 38°02′15″ N., long. 77°18′03″ W.; to lat. 38°02′40″ N., long. 77°18′59″ W.; then to the point of beginning.

Designated altitudes. 4,500 feet MSL to but not including 7,500 feet MSL.

Time of designation. Intermittent by NOTAM at least 48 hours in advance.

Controlling agency. FAA, Potomac TRACON.

Using agency. U.S. Army, Commander, Fort A.P. Hill, VA.

4. R–6601C Fort A.P. Hill, VA [New]

Boundaries. Beginning at lat. 38°04′37″ N., long. Long. 77°18′44″ W.; then along U.S. Highway 301 to lat. 38°09′38″ N., long. 77°12′07″ W.; to lat. 38°07′09″ N., long. 77°08′40″ W.; to lat. 38°05′30″ N., long. 77°09′05″ W.; to lat. 38°04′40″ N., long. 77°10′19″ W.; to lat. 38°03′12″ N., long. 77°09′34″ W.; to lat. 38°02′22″ N., long. 77°11′39″ W.; to lat. 38°02′30″ N., long. 77°14′39″ W.; to lat. 38°01′50″ N., long. 77°16′07″ W.; to lat. 38°02′15″ N., long. 77°18′03″ W.; to lat. 38°02′40″ N., long. 77°18′59″ W.; then to the point of beginning.

Designated altitudes. 7,500 feet MSL to 9,000 feet MSL.

Time of designation. Intermittent by NOTAM at least 48 hours in advance.

Controlling agency. FAA, Potomac TRACON.

Using agency. U.S. Army, Commander, Fort A.P. Hill, VA.

* * * * *

Issued in Washington, DC, on April 4, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–08582 Filed 4–11–13; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–357]

Schedules of Controlled Substances: Placement of Methylone Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Administrator of the Drug Enforcement Administration (DEA) places the substance 3,4-methylenedioxy-N-methylcathinone

(methylone) including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into Schedule I of the Controlled Substances Act (CSA). This action is pursuant to the CSA which requires that such actions be made on the record after opportunity for a hearing through formal rulemaking.

DATES: *Effective date:* April 12, 2013.

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Executive Assistant, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Legal Authority

The DEA implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended (hereinafter, ''CSA''). The implementing regulations for these statutes are found in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. Under the CSA, controlled substances are classified in one of five schedules based upon their potential for abuse, their currently accepted medical use, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances by statute are found at 21 U.S.C. 812(c) and the current list of scheduled substances are published at 21 CFR part 1308.

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, ''add to such a schedule or transfer between such schedules any drug or other substance if he * * * (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *'' The findings required for the placement of a controlled substance in Schedule I are: ''(A) The drug or other substance has a high potential for abuse. (B) The drug or substance has no currently accepted medical use in treatment in the United States (U.S.) (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.'' 21 U.S.C. 812(b). Pursuant to 28 CFR 0.100(b), the Attorney General has delegated this scheduling authority to the Administrator of DEA.

The CSA provides that scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary for Health of the Department of Health and Human Services (HHS), or (3) on the petition of any interested party. 21 U.S.C. 811(a). This action is based on a recommendation from the Assistant Secretary for Health (Assistant Secretary) [1] of HHS and on an evaluation of all other relevant data by DEA. In light of methylone's current status as a temporarily scheduled, Schedule I controlled substance (see Section titled ''Background,'' below), this action permanently imposes the regulatory controls and criminal sanctions of Schedule I on the manufacture, distribution, dispensing, importation, and exportation of methylone and products containing methylone.

Pursuant to 21 CFR 1308.44(e), the Administrator of DEA may issue her final order ''[I]f all interested persons waive or are deemed to waive their opportunity for the hearing or to participate in the hearing.'' As no requests for a hearing were filed on this proposed scheduling action, all interested persons are deemed to have waived their opportunity for a hearing pursuant to 21 CFR 1308.44(d), and the Administrator may issue her final order without a hearing.

Background

On September 8, 2011, DEA published a Notice of Intent to temporarily place 3,4-methylenedioxy-N-methylcathinone (methylone) along with two other synthetic cathinones (4-methyl-N-methylcathinone (mephedrone) and 3,4-methylenedioxypyrovalerone (MDPV)) into Schedule I pursuant to the temporary scheduling provisions of the CSA. 76 FR 55616. Following this, on October 21, 2011, DEA published a Final Order in the **Federal Register** amending 21 CFR 1308.11(g) to temporarily place these three synthetic cathinones into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 76 FR 65371. This Final Order, which became effective on the date of publication, was based on findings by the DEA Administrator that the temporary scheduling of these three synthetic cathinones was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). At the time the Final Order took effect, the CSA (21 U.S.C. 811(h)(2) (2011)) required that the temporary scheduling of a substance expire at the end of one year from the date of issuance of the scheduling order, and it also provided that, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, the temporary scheduling of that substance could be extended for up to six months.[2] Under this provision, the temporary scheduling of methylone expired on October 20, 2012. Pursuant to 21 U.S.C. 811(h)(2), an extension until April 20, 2013, was ordered by the DEA Administrator. 77 FR 64032. In addition, on October 17, 2012, DEA published a Notice of Proposed Rulemaking (NPRM) which proposed the permanent placement of methylone in Schedule I of the CSA. 77 FR 63766. This action finalizes the scheduling action proposed in the October 17, 2012, NPRM.

As described in the October 21, 2011, Final Order, methylone is a designer drug of the phenethylamine class and is structurally and pharmacologically similar to amphetamine, 3,4-methylenedioxymethamphetamine (MDMA), cathinone and other related substances. The addition of a beta-keto (β-ketone) substituent to the phenethylamine core structure produces a group of substances that have β-keto-phenethylamine as the core structure. Methylone has a β-keto-phenethylamine core structure. Methylone has been used lawfully as a research chemical, but based on the review of the scientific literature, there are no known medical uses for methylone. Furthermore, the Assistant Secretary has advised that there are no exemptions or approvals in effect for methylone under section 505 (21 U.S.C. 355) of the Federal Food, Drug, and Cosmetic Act.

Determination To Schedule Methylone

Pursuant to 21 U.S.C. 811 (a), proceedings to add a drug or substance

[1] As set forth in a memorandum of understanding entered into by HHS, the Food and Drug Administration (FDA), and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518. In addition, because the Secretary of the Department of Health and Human Services has delegated to the Assistant Secretary for Health of the Department of Health and Human Services the authority to make domestic drug scheduling recommendations, for purposes of this document, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.''

[2] On July 9, 2012, President Obama signed the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) (FDASIA), which amended several provisions of the CSA. Subtitle D of FDASIA is titled the ''Synthetic Drug Abuse Prevention Act of 2012.'' In particular, FDASIA amended Schedule I of section 202(c) of the CSA to include mephedrone and MDPV but not methylone, and amended section 201(h)(2) to increase the maximum timeframes for temporary scheduling. Pub. L. 112–144, Sections 1152(b) and 1153.

to those controlled under the CSA may be initiated by the Attorney General on his own motion. On March 30, 2012, DEA requested a scientific and medical evaluation and scheduling recommendation from the Assistant Secretary for methylone, mephedrone and MDPV pursuant to 21 U.S.C. 811(b). On August 14, 2012, the Assistant Secretary provided DEA with a scientific and medical evaluation and scheduling recommendation document prepared by the Food and Drug Administration (FDA) titled ''Basis for the Recommendation to Place 3,4-Methylenedioxymethcathinone (Methylone) and its Salts in Schedule I of the Controlled Substances Act (CSA).'' Pursuant to 21 U.S.C. 811(b), this document contained an eight-factor analysis of the abuse potential of methylone, along with HHS' recommendation to control methylone under Schedule I of the CSA. Upon receipt and evaluation of the scientific and medical evaluation and scheduling recommendation from the Assistant Secretary,[3] and after conducting an eight-factor analysis of methylone's abuse potential pursuant to 21 U.S.C. 811(c), DEA published the NPRM titled ''Schedules of Controlled Substances: Placement of Methylone into Schedule I'' on October 17, 2012. 77 FR 63766. This NPRM proposed placement of methylone into Schedule I of the CSA, and provided an opportunity for all interested persons to request a hearing on or before November 16, 2012, or to submit comments on or before December 17, 2012.

Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in the scheduling decision. Please note that both the DEA and HHS analyses are available under ''Supporting and Related Material'' of the public docket for this rule at *www.regulations.gov* under docket number DEA–357.

1. *The Drug's Actual or Relative Potential for Abuse:* The abuse potential of methylone is associated with its ability to evoke pharmacological effects similar to those evoked by the Schedule I and II substances such as cathinone (Schedule I), methcathinone (Schedule I), MDMA (Schedule I), amphetamine (Schedule II), methamphetamine (Schedule II), and cocaine (Schedule II). These Schedule I and II substances have a high potential for abuse.

The legislative history of the CSA suggests the following four prongs to consider in determining whether a particular drug or substance has potential for abuse: [4]

i. There is evidence that individuals are taking the drug or other substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; or

ii. There is significant diversion of the drug or substance from legitimate drug channels; or

iii. Individuals are taking the substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs; or

iv. The drug is a new drug so related in its action to a drug or other substance already listed as having a potential for abuse to make it likely that the drug or other substance will have the same potential for abuse as such drugs, thus making it reasonable to assume that there may be significant diversion from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

With respect to the first prong, a number of case reports and case series have shown that individuals are taking methylone and products containing methylone in amounts sufficient to induce adverse health effects similar to those induced by amphetamine, methamphetamine, and MDMA, Schedule I and II substances. These effects included elevated body temperature, increases in heart rate and respiratory exchange, changes in blood pressure, seizures, erratic behavior, and coma. Even death has been reported following the abuse of methylone or products containing methylone. Further, law enforcement encounters indicate the occurrence of a fatal automotive accident that was caused by a driver under the influence of a product containing methylone.

In considering evidence of significant diversion of the drug or substance from legitimate drug channels under the second prong, it must be noted that as of October 21, 2011, methylone has been temporarily controlled as a Schedule I substance and thus has not been legally available unless for research purposes. However, the National Forensic Laboratory Information System (NFLIS) details 4,727 reports from state and local forensic laboratories, identifying methylone in drug related exhibits for a period from January 2009 to December 2012 from 42 states.[5] The System to Retrieve Information from Drug Evidence (STRIDE) identified methylone in 404 drug related exhibits from a period from January 2009 to December 2012.[5]

For the third prong, HHS states that there is no currently accepted medical use for methylone and no medical practitioner is currently licensed by law to administer methylone. Indeed, the FDA has not approved a new drug application (NDA) for methylone for any therapeutic indication, and no investigational new drug (IND) application for methylone is currently active. Thus, with no accepted medical use or administering practitioners, individuals currently using products containing methylone are doing so on their own initiative without medical advice from a practitioner licensed to administer methylone.

With regard to the fourth prong, HHS states that methylone produces pharmacological effects similar to those produced by the Schedule I and II central nervous system (CNS) substances such as amphetamine, methamphetamine, cocaine, and MDMA which have a high potential for abuse. Methylone, like these Schedule I and II substances, affects the concentrations of the neurotransmitters dopamine, serotonin and norepinephrine in the CNS. In drug discrimination assays, methylone substitutes for MDMA, amphetamine, methamphetamine, and cocaine, which suggests that methylone will likely produce subjective effects in humans similar to these substances and have a similar pattern of abuse. Methylone, like methamphetamine, amphetamine, and cocaine, is a CNS stimulant and produces locomotor stimulant activity in animals.

Methylone has no known medical use in the U.S. but evidence demonstrates that methylone is being abused by individuals for its psychoactive effects. Methylone has been encountered by law enforcement throughout the U.S. reported in NFLIS and in STRIDE databases suggesting that individuals are abusing methylone. Methylone has also been identified during the toxicological screening of individual human urine samples which also demonstrates that individuals are abusing this substance. In addition, information from poison centers indicates the abuse of synthetic

[3] HHS did not provide a scientific and medical evaluation and scheduling recommendation regarding mephedrone and MDPV. However, mephedrone and MDPV were listed as Schedule I substances under the FDASIA (see Footnote 2, above).

[4] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); 1970 U.S.C.C.A.N. 4566, 4601.

[5] NFLIS is a program sponsored by DEA's Office of Diversion Control which compiles information on exhibits analyzed in State and local law enforcement laboratories. STRIDE is a DEA database which compiles information on exhibits analyzed in DEA laboratories.

cathinones which likely includes methylone. The American Association of Poison Control Centers (AAPCC) [6] reported in a press release that poison centers took 304 calls in 2010 regarding synthetic cathinone exposures and 6,136 calls in 2011. As of December 31, 2012, poison centers have received 2,654 calls relating to these products. These calls were received in poison centers representing at least 47 states and the District of Columbia. Although methylone may not be specifically identified during exposure calls or identified by toxicology testing by AAPCC, it is likely that some of these retail products described by the callers contained methylone, based on the identification of methylone in approximately 27% of all synthetic cathinones related exhibits reported to NFLIS from January 2009 to December 2012.

State public health and poison centers have warned of the dangers associated with the use of synthetic cathinones and their associated products that are being found on the designer drug market. In response to the abuse of methylone and other synthetic cathinones, as of March 2013, at least 42 states have emergency scheduled or enacted legislation placing regulatory controls on some or many of the synthetic cathinones including mephedrone, methylone, MDPV or a defined general class of cathinones. Numerous local jurisdictions have also placed controls on methylone and other synthetic cathinones. All five branches of the U.S. military prohibit military personnel from possessing or using synthetic cathinones including methylone.

Methylone has been reported to cause a number of adverse effects that are characteristic of stimulants like methamphetamine, amphetamine, and cocaine. Adverse effects associated with the consumption of methylone include those typical of a sympathomimetic agent such as hyperthermia, seizures, hyponatremia, bruxism, sweating, hypertension, tachycardia, headache, palpitations, thirst, and mydriasis. Other effects that have been reported from the use of methylone include psychological effects such as confusion, psychosis, paranoia, hallucinations, combativeness, and agitation. Finally, reports of death from individuals abusing methylone indicate that methylone is a serious public health threat.

2. *Scientific Evidence of the Drug's Pharmacological Effects, If Known:* In the recommendation from HHS for the placement of methylone in Schedule I of the CSA, HHS states that based on the results of preclinical studies and the toxicological profile observed in emergency room cases and medical examiner cases it is highly likely that methylone produces pharmacological effects in humans that are similar to those produced by the Schedule I and II substances amphetamine, methamphetamine, cocaine, and MDMA. These findings are based on published in vitro data such as the release of monoamines, inhibition of reuptake of monoamines, and in vivo studies (microdialysis, locomotor activity, body temperature, drug discrimination) and are also based on data from studies conducted by National Institute on Drug Abuse contract researchers (locomotor, drug discrimination, in vitro receptor binding, and functional assays). The preclinical data show that methylone can substitute for MDMA or amphetamine in rats trained to discriminate amphetamine or MDMA, respectively. Methylone, like methamphetamine, amphetamine, and cocaine, is a CNS stimulant and produces locomotor stimulant effects in animals. Methylone, like methamphetamine, has a rewarding effect as evidenced by conditioned place preference tests. Methylone is an inhibitor of dopamine, serotonin and norepinephrine uptake and also causes the release of these neurotransmitters in the CNS. Furthermore, studies show that methylone, like MDMA, can be cytotoxic to liver cells. HHS further states that the toxicological profile observed in emergency room and medical examiner cases involving methylone demonstrate that the pharmacological profile observed in humans is in accordance with preclinical data.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* Methylone is a β-ketophenethylamine (i.e., synthetic cathinone) that is structurally and pharmacologically similar to amphetamine, methamphetamine, MDMA, cathinone and other related substances. Methylone can be prepared from its corresponding ketone by a two-step synthesis. Studies indicate that humans metabolize methylone and metabolites of methylone have been found in the urine samples of humans and animals given methylone. Research in anti-depressant and anti-parkinson agents resulted in the synthesis and patenting of methylone. However, according to HHS, methylone has no accepted medical use in the U.S., does not have an approved NDA, and is not currently marketed in the U.S. in an FDA-approved drug product. A drug has a ''currently accepted medical use'' if all of the following five elements have been satisfied: The drug's chemistry is known and reproducible; and there are adequate safety studies; and there are adequate and well-controlled studies proving efficacy; and the drug is accepted by qualified experts; and the scientific evidence is widely available. 57 FR 10499. HHS also states that there are no published clinical studies involving methylone. DEA has also not found any references to clinical studies involving methylone's efficacy and safety in the scientific and medical literature. Although the chemistry of methylone is known and has been reproduced, as mentioned above there are no clinical studies involving methylone. Thus, methylone has no currently accepted medical use in treatment in the U.S. and there is a lack of accepted safety for use of methylone under medical supervision.

4. *Its History and Current Pattern of Abuse:* Methylone is a synthetic cathinone that emerged on the U.S.' illicit drug market in 2009 and prior to its temporary control was perceived as being a ''legal'' alternative to cocaine, methamphetamine, and MDMA. Methylone has been falsely marketed as ''research chemicals,'' ''plant food,'' or ''bath salts'' and has been sold at smoke shops, head shops, convenience stores, adult book stores, and gas stations and can also be purchased on the Internet under a variety of product names (White Dove, Explosion, Tranquility etc.). It is commonly encountered in the form of powders, capsules, and tablets. The packages of these commercial products usually contain the warning ''not for human consumption.'' Poison centers reported a large number of toxic exposures to these products as indicated by the number of exposure calls related to synthetic cathinones. A large majority of these exposures were by intentional abuse, misuse, or suspected suicide. Most of these exposures were described as acute. AAPCC data also identified the most common route of administration for the synthetic cathinones as inhalation/nasal. Information from published scientific studies indicate that the most common routes of administration for methylone is ingestion by swallowing capsules or tablets or nasal insufflation by snorting the powder. Evidence from poison centers, published case reports, and law enforcement encounters suggest that the main users of methylone are young

[6] AAPCC is a non-profit, national organization that represents the poison centers of the United States.

adults. These substances are popular among youths and young adults with males appearing to abuse methylone more than females. There is evidence that methylone may be co-ingested with other substances including other synthetic cathinones, pharmaceutical agents, or other recreational substances.

5. *The Scope, Duration, and Significance of Abuse:* Evidence that methylone is being abused is confirmed by drug courts,[7] calls to poison centers, and encounters by law enforcement. Methylone has been identified in specimens from individuals submitted for testing by drug court participants. Drug courts submitted to DEA 18 reports that detail the analysis of biological specimens that contained synthetic cathinones. Methylone was mentioned in 5 of these reports. Evidence from poison centers also indicates that the abuse of synthetic cathinones like methylone is widespread. The AAPCC reported in a press release that poison centers took 304 calls in 2010 regarding synthetic cathinone exposures and 6,136 calls in 2011. As of December 31, 2012, poison centers have received 2,654 calls relating to these products for calendar year 2012. These calls were received in poison centers representing at least 47 states and the District of Columbia. Methylone may not have been specifically mentioned during the exposure calls but it is likely that some of these retail products described by the callers contained methylone based on the identification of methylone in approximately 27% of all synthetic cathinones related exhibits reported to NFLIS from January 2009 to December 2012. Evidence of the increased abuse of methylone is supported by law enforcement encounters of methylone. Forensic laboratories have analyzed drug exhibits received from state, local, or federal law enforcement agencies that were found to contain methylone.[8] NFLIS details 4,727 reports from state and local forensic laboratories identifying methylone in drug related exhibits for a period from January 2009 to December 2012 from 42 States. NFLIS registered 4 reports identifying methylone from 3 states in 2009. However, there were 71 reports from 18 states related to methylone registered in NFLIS in 2010 and there were 1,712 reports from 41 states in 2011. From January to December 2012 there were 2,940 reports from 40 states. STRIDE also details 404 reports from federal forensic laboratories identifying methylone in drug related exhibits for a period from January 2009 to December 2012. STRIDE (which reports data from 6 DEA laboratories) registered 2 exhibits pertaining to the trafficking, distribution, and abuse of methylone in 2009. There were 13 exhibits pertaining to the trafficking, distribution and abuse of methylone registered in STRIDE in 2010 and 130 drug exhibits in 2011. In 2012, 259 drug exhibits pertaining to the trafficking, distribution and abuse of methylone were recorded in the STRIDE database.

At selected U.S. ports of entry, the U.S. Customs and Border Protection (CBP) has encountered shipments of products containing methylone. The most commonly identified synthetic cathinone was methylone. As of February 2013, methylone was identified in 145 of 352 shipments encountered by CBP from June 2008 to December 2012. These shipments of methylone were in powdered form, ranging from gram to multi-kilogram quantities. Most of the shipments of these synthetic cathinones that contained methylone originated in China and were destined for delivery throughout the U.S. to places like Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Illinois, Indiana, Kansas, Louisiana, Oklahoma, Oregon, Missouri, Nevada, New Mexico, Tennessee, Texas, Washington, and West Virginia.

Concerns over the abuse of methylone and other synthetic cathinones have prompted many states to control these substances. As of March 2013, at least 42 states have emergency scheduled or enacted legislation placing regulatory controls on some or many of the synthetic cathinones including methylone. In addition, the U.S. Armed Forces prohibited the use of synthetic cathinones including mephedrone, methylone, and MDPV.

6. *What, if Any, Risk There Is to the Public Health:* Law enforcement, military, and public health officials have reported exposure incidents that demonstrate the dangers associated with methylone to both the individual abusers and other affected individuals. Numerous individuals have presented at emergency departments following exposure to methylone or products containing methylone. Case reports describe presentations to emergency departments of individuals exposed to methylone with symptoms that include tachycardia, headache, palpitations, agitation, anxiety, mydriasis, tremor, fever, sweating, and hypertension. Some individuals under the influence of methylone have acted violently and unpredictably causing harm, or even death, to themselves or others. In addition, individuals suspected of driving under the influence of intoxicating substances have been found to have positive test results for methylone and some of these incidents involving methylone intoxications have resulted in the deaths of individuals. There are at least three reported deaths in which methylone was ruled as the cause of death, either by the medical examiner or after an autopsy, and there are many reports in which methylone was implicated (i.e., the primary cause of death is not methylone toxicity) in deaths. Additionally, products containing methylone and other synthetic cathinones often do not bear labeling information regarding their ingredients, and if they do it may not contain the expected active ingredients or identify the health risks and potential hazards associated with these products.

7. *Its Psychic or Physiological Dependence Liability:* According to HHS, there are no studies or case reports that document the psychic or physiological dependence potential of methylone. However, HHS states that because methylone shares pharmacological properties with those of the Schedule I and II substances amphetamine, methamphetamine, cocaine, and MDMA, it is probable that methylone has a dependence profile similar to that of these substances which are known to cause substance dependence.

8. *Whether the Substance Is an Immediate Precursor of a Substance Already Controlled Under the CSA:* Methylone is not considered an immediate precursor of any controlled substance of the CSA as defined by 21 U.S.C 802(23).

Requests for a Hearing and Comments

DEA received no requests for a hearing on this scheduling action, but did receive 15 comments in response to the October 17, 2012, NPRM to schedule methylone. These comments expressed mixed support for the NPRM.

Comments expressing support for the rule: Five commenters supported the proposal to schedule methylone as a Schedule I substance. One commenter stated that drug forum Web site accounts regarding methylone indicated elevated heart rates (similar to

[7] Drug courts were developed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment, mandatory periodic drug testing, and the use of appropriate sanctions and other rehabilitation services. Drug courts analyze specimens from participants for new and existing drugs of abuse.

[8] State and local forensic drug reports from January 2009 to December 2012 analyzed on February 6, 2013 and federal on February 7, 2013. The 2012 drug reports are likely to be incomplete due to laboratory reporting lag time.

amphetamines), but that (unlike amphetamines) there was little evidence to suggest any medical benefits from methylone. This commenter concluded that Schedule I placement was appropriate for methylone because of the lack of knowledge regarding the substance and its high potential for harm. Another commenter stated that methylone is a synthetic hallucinogenic amphetamine analogue (similar to MDMA) and that in vitro studies have revealed that methylone is as potent as MDMA in binding to monoamine transporters on the neuronal cell surface, which leads to increased serotonin and dopamine levels in the brain that could enhance the substance's addictive potential. In addition, the commenter stated that subjective comparisons among recreational users regarding methylone's effects suggest subtle differences to those of MDMA. The commenter concluded that due to structural similarities with MDMA, limited safety data, and no identified medical use, classification of methylone as a Schedule I controlled substance was appropriate. Another commenter stated that Schedule I placement for methylone was warranted. The commenter noted that methylone has similar effects to some Schedule I and II controlled substances (such as amphetamine, methamphetamine, cocaine, and MDMA), and that methylone has been used as an alternative to methamphetamine, cocaine, and other illegal drugs. This commenter also stated that actual abuse data indicates that individuals are abusing methylone and concluded that methylone should be treated like Schedule I drugs.

A social worker emphasized the importance of outreach efforts aimed at educating and informing the public the meaning and consequences of placing methylone in Schedule I of the CSA, the method to identify methylone or substances containing methylone, and the side effects of methylone. The commenter also stated that methylone should be designated as a harmful drug for health care use so that medical costs of treating adverse effects resulting from the use of methylone would be covered by insurance. Finally, the commenter stressed the need for increased law enforcement and drug court funding appropriations in anticipation of the potential increase in drug charges related to methylone.

DEA response: DEA appreciates the support of these commenters for this final rule, but notes that some of the suggestions regarding the consequences of scheduling methylone in Schedule I of the CSA are beyond the scope of the CSA.

Comments expressing opposition to the rule: Nine of the comments were in opposition to the proposed scheduling of methylone in Schedule I of the CSA. Various reasons for the disapproval of the scheduling of methylone were provided. These comments can be grouped in the following general categories: (1) Concern over prohibition or restrictions on use in research, (2) concern regarding DEA's findings that methylone has high abuse potential and no currently accepted medical use, (3) concern regarding various procedural aspects of the CSA, and (4) concern about the long-term effects of scheduling methylone.

Concern over prohibition or restriction of use in research: Several commenters claimed that Schedule I placement would put barriers in place for clinicians or researchers who might be interested in investigating the potential benefits of methylone in patients. According to these commenters, placing methylone in Schedule I would be disastrous for research in the use of serotonin releasing agents to treat anxiety disorders. In addition, the commenters claimed that although recent studies have shown methylone to have tremendous potential and ''effectiveness'' with regard to post-traumatic stress disorder (PTSD), Schedule I placement ''implicitly undermines'' and ''severely impedes'' further research attempts to find medical uses. One of these commenters also claimed that ''while, like MDMA, methylone acts to release serotonin, and to a lesser extent dopamine and norepinephrine, it releases these chemicals in different ratios than MDMA.'' This commenter reasoned that Schedule I placement would somehow harm efforts to contrast the effects of methylone to MDMA by ''essentially silenc[ing]'' such research and ''hinder[ing] the advancement'' of better treatments. Yet another commenter claimed that Schedule I placement would ''cripple efforts at learning,'' make it ''difficult and tedious'' to be approved to do research, and ''create a stigma'' regarding methylone. This commenter reasoned that unknown substances like methylone should be left in a legal status which makes further research into such substances possible.

DEA response: Placement of a substance in Schedule I of the CSA does not preclude scientific research from being conducted using methylone. Any person wishing to conduct research using methylone may do so provided that the person has obtained a Schedule I researcher registration with DEA, has the appropriate research protocols in place with FDA, and meets all other statutory and regulatory requirements. This registration can be obtained by submitting an application for schedule I registration in accordance with 21 CFR 1301.11, 1301.13, 1301.32 and 1301.18.

Concern regarding the pharmacological and abuse potential findings considered by DEA for the purpose of scheduling methylone: Several commenters argued that methylone did not satisfy the criteria for placement in Schedule I, because it either did not meet the ''high potential for abuse'' prong or the ''no currently accepted medical use in treatment in the U.S.'' prong that the CSA requires in order for a substance to be placed in Schedule I. 21 U.S.C. 812(b)(1)(A)–(B).

With regard to methylone's high potential for abuse, one commenter stated that DEA incorrectly assumed that ''methylone'' is coextensive with reports of abuse of ''synthetic cathinones.'' Another commenter stated that scheduling decisions should not be made on the basis of ''singular, albeit appalling'' ''hyperbolic news events.'' Yet another commenter stated that the scheduling of methylone was based on ''conjecture and one fatality.'' Finally, one commenter cited to a published animal study (Baumann et al., 2012, Neuropsychopharmacology, 37: 1192–1203) which the commenter claimed ''suggests that methylone might have reduced potential for adverse effects and abuse compared to MDMA and methamphetamine.''

With regard to methylone's currently accepted medical use in treatment in the U.S., one commenter stated that too little is currently known about methylone to conclude that it has no therapeutic value or to justify placement in Schedule I. This commenter claimed that anecdotal reports have shown that methylone has beneficial effects and that it may be of value in treating PTSD or other disorders having an anxiety component. According to the commenter, these facts underscored the need for clinical tests. Another commenter noted that like methylone, Einsteinium, which DEA notes is an element like hydrogen, oxygen, and carbon, lacks a known medical purpose but yet is not a controlled substance.

DEA response: DEA does not agree with these statements. As detailed in the HHS and DEA analyses and the HHS recommendation, studies indicate that the abuse potential and pharmacological effects of methylone are similar to those of Schedule I and II substances. Preclinical studies indicated that methylone, like amphetamine,

methamphetamine, cathinone and methcathinone, has pharmacological effects at monoamine transporters. Furthermore, behavioral effects of methylone in animals and humans were found to be similar to those of Schedule I and II substances which have a high potential for abuse. In humans, methylone is expected to produce subjective responses similar to MDMA, methamphetamine, and cocaine based on drug discriminations studies in rodents. Accordingly, published case reports demonstrate that methylone produces pharmacological effects including adverse effects that are characteristic of substances like MDMA, methamphetamine, amphetamine, and cocaine. In addition, the abuse of methylone presents a safety hazard to the health of individuals. There are reports of emergency room admissions and deaths associated with the abuse of methylone. In addition, there is no currently accepted medical use for methylone (for reasons that have already been provided (see Factor 3, ''The State of Current Scientific Knowledge Regarding the Drug or Other Substance,'' above)).

Concern regarding various procedural aspects of the CSA: A few commenters raised concerns about the legitimacy of the CSA. One commenter stated that the ''CSA should have to prove its effectiveness before expanding its parameters.'' Other commenters stated that the CSA is ''pointless'' and that Schedule I is an unnecessary and harmful classification for any substance.

DEA Response: DEA disagrees with these comments. DEA's mission is to enforce the controlled substance laws and regulations. Methylone satisfies the CSA's criteria for placement in Schedule I by virtue of its high potential for abuse, the fact that it has no currently accepted medical use in treatment in the U.S., and its lack of safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Long-term effects: One commenter argued that outlawing methylone would push the market for this dangerous substance further underground and would cause the production of a replacement product.

DEA Response: Persons producing such noncontrolled replacement products may nevertheless subject themselves to criminal prosecution under the Controlled Substances Analogue Enforcement Act of 1986 (Pub. L. 99–570) to the extent such products are intended for human consumption and share sufficient chemical and pharmacological similarities to Schedule I or Schedule II controlled substances. 21 U.S.C. 802(32)(a) and 813.

Allocation of Statutory Responsibilities Between DEA and FDA: One commenter did not express an opinion either for or against the scheduling of methylone. The commenter stated that FDA should handle pharmacological matters. According to this commenter, DEA is biased which affects its science and taints its decision-making. Thus, FDA's decision would be more objective and science-based. This commenter is concerned that DEA is biased in matters regarding science and this bias taints the DEA's decision making.

DEA Response: Congress has crafted the CSA to ensure a proper balance in scheduling actions by assigning different responsibilities to HHS and to DEA. The CSA requires the Secretary of HHS to consider the scientific evidence of a drug's pharmacological effect (if known) in making its scientific and medical evaluation and scheduling recommendation (21 U.S.C. 811(c)(2)), and provides that ''[t]he recommendations of the Secretary to the Attorney General shall be binding on the Attorney General as to such scientific and medical matters * * *'' 21 U.S.C. 811(b). DEA is directly responsible for review in areas of abuse and diversion.

Scheduling Conclusion

Based on consideration of the scientific and medical evaluation and accompanying recommendation of HHS, and based on DEA's consideration of its own eight-factor analysis, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of methylone. As such, DEA hereby will schedule methylone as a controlled substance under the CSA.

Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as Schedules I, II, III, IV, and V. The statute outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendations of the Assistant Secretary for Health of HHS and review of all available data, the Administrator of DEA, pursuant to 21 U.S.C. 812(b)(1), finds that:

(1) 3,4-methylenedioxy-N-methylcathinone (methylone) has a high potential for abuse;

(2) 3,4-methylenedioxy-N-methylcathinone (methylone) has no currently accepted medical use in treatment in the U.S.; and

(3) there is a lack of accepted safety for use of 3,4-methylenedioxy-N-methylcathinone (methylone) under medical supervision.

Based on these findings, the Administrator of DEA concludes that 3,4-methylenedioxy-N-methylcathinone (methylone) including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrants control in Schedule I of the CSA (21 U.S.C. 812(b)(1)).

Requirements for Handling Methylone

Methylone is currently scheduled on a temporary basis in Schedule I and is therefore currently subject to the CSA regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, possession, dispensing, importing, and exporting of a Schedule I controlled substance, including those listed below. These controls on methylone will continue on a permanent basis:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with methylone or who desires to manufacture, distribute, dispense, import, export, engage in research or conduct instructional activities with methylone must be registered to conduct such activities pursuant to 21 U.S.C. 822 and 958 and in accordance with 21 CFR Part 1301.

Security. Methylone is subject to Schedule I security requirements and must be manufactured and distributed pursuant to 21 U.S.C. 823 and in accordance with 21 CFR 1301.71, 1301.72(a), (c) and (d), 1301.73, 1301.74, 1301.75(a) and (c), 1301.76.

Labeling and Packaging. All labels and labeling for commercial containers of methylone must be in accordance with 21 CFR 1302.03–1302.07, pursuant to 21 U.S.C. 825.

Quotas. Quotas for methylone have been established based on registrations granted and quota applications received pursuant to part 1303 of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of methylone must keep an inventory of all stocks of methylone on hand pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Every registrant who desires registration in Schedule I for methylone must conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants must keep records pursuant to 21 U.S.C. 827 and

in accordance with 21 CFR 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23.

Reports. All registrants required to submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.33 must do so regarding methylone.

Order Forms. All registrants involved in the distribution of methylone must comply with the order form requirements pursuant to 21 U.S.C. 828 and 21 CFR 1305.

Importation and Exportation. All importation and exportation of methylone must be done in accordance with 21 CFR Part 1312, pursuant to 21 U.S.C. 952, 953, 957, and 958.

Criminal Liability. Any activity with methylone not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act is unlawful.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget pursuant to Section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule does not have tribal implications warranting the application of Executive Order 13175. The rule does not 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.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. First, there is no commercial, industrial, or accepted medical use for methylone. At least 42 states have already prohibited the manufacture, distribution, and use of methylone, and all U.S. military service members are prohibited from possessing and using it. There have been 30 entities registered with the DEA to handle methylone since it was temporarily scheduled on October 21, 2011. If the synthetic cannabinoid JWH–018 is used as a reference, as it also has no commercial, industrial, or accepted medical use, there are currently 40 entities registered to handle this substance since it was temporarily scheduled on March 1, 2011, and subsequently placed in Schedule I permanently on July 9, 2012, by the Synthetic Drug Abuse Prevention Act of 2012, Public Law 112–144, Title XI, Subtitle D, Sections 1151–1153. Based on this, and because there have been no references to clinical studies involving methylone in the scientific and medical literature, DEA assumes the number of entities registered to handle methylone will remain relatively small. Secondly, there are approximately 1.4 million controlled substances registrants who represent approximately 381,000 businesses affected by this rule. DEA estimates that 371,000 (97 percent) of the affected businesses are considered ''small entities'' in accordance with the RFA and Small Business Administration standards. 5 U.S.C. 601(6) and 15 U.S.C. 632. Even if all those registered to handle methylone (30 entities) are considered to be small entities, the number of small entities affected by this rule would not be substantial.

Unfunded Mandates Reform Act of 1995

This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995 (UMRA).

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

Congressional Review Act

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets. However, pursuant to the CRA, DEA has submitted a copy of this Final Rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Section 1308.11 is amended by adding a new paragraph (d)(47) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(47) 3,4-Methylenedioxy-N-methylcathinone (Methylone) * * * (7540)

* * * * *

Dated: April 5, 2013.

Michele M. Leonhart,

Administrator.

[FR Doc. 2013–08673 Filed 4–11–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 558

RIN 3141–AA15

Tribal Background Investigations and Licensing

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Technical amendment.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) is revising its gaming license regulations to correct a section reference in one of its rules.

DATES: Effective: April 29, 2013.

FOR FURTHER INFORMATION CONTACT: John Hay, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Email: *john_hay@nigc.gov;* telephone: 202–632–7009.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or the Act), Public Law 100–497, 25 U.S.C. 2701, et seq., was signed into law on October 17, 1988. The Act established the NIGC and sets out a comprehensive framework for the regulation of gaming on Indian lands. The Act provides a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. To ensure that Indian tribes are the primary beneficiaries of their gaming operations and to protect such gaming as a means of generating tribal revenue, IGRA requires that tribes conduct background investigations on their gaming operations' primary management officials and key employees and submit those results to the Commission before issuing gaming licenses. 25 U.S.C. 2710(b)(2)(F)(ii)(III). The Act also requires tribes to notify the Commission after they have issued such gaming licenses to their primary management officials or key employees. 25 U.S.C. 2710(b)(2)(F)(ii)(I).

On January 25, 2013, the Commission published a final rule amending parts 556 and 558: to streamline the submission of documents to the Commission; to ensure that two notifications are submitted to the Commission in compliance with IGRA; and to clarify the rules regarding the issuance of temporary and permanent gaming licenses. 78 FR 5276, Jan. 25, 2013. The final rules published on January 25, 2013 incorrectly referenced a specific section in one of its rules. This amendment is intended to correct the section reference in one of its rules.

Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and assigned OMB Control Number 3141–0003. The OMB control number expires on October 31, 2013.

List of Subjects in 25 CFR Part 558

Gaming, Indian lands.

Text of the Rule

For the reason discussed in the Preamble, the Commission amends its regulations at 25 CFR part 558 as follows:

PART 558—GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

■ 1. The authority citation for part 558 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 558.2 [Amended]

■ 2. Amend § 558.2 by revising the reference in paragraph (c) to ''§ 558.3(a)'' to read ''paragraph (a) of this section.''

Dated: April 8, 2013.

Tracie L. Stevens,

Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2013–08538 Filed 4–11–13; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2009–OS–0038; RIN 0790–AI54]

32 CFR Part 182

Defense Support of Civilian Law Enforcement Agencies

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule implements DoD regulations and legislation concerning restriction on direct participation by DoD personnel. It provides specific policy direction and assigns responsibilities with respect to DoD support provided to Federal, State, and local civilian law enforcement agencies, including responses to civil disturbances.

DATES: This rule is effective May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Tom LaCrosse, 571–256–8353.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

a. The purpose of this rule is to implement the statutory requirements for the Department of Defense support of civilian law enforcement agencies. This rule provides specific policy direction and assigns responsibilities to Department of Defense key individuals providing support to Federal, State, Tribal, and local law enforcement agencies, including response to civil disturbances within the United States, including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States or any other political subdivision thereof.

b. The legal authority for this rule is 10 U.S.C. 375, ''Restriction on participation by Military Personnel.''

II. Summary of the Major Provisions of the Rule

a. Support in Accordance With the Posse Comitatus Act

The primary restriction on DoD participation in civilian law enforcement activities is the Posse Comitatus Act. It provides that whoever willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute U.S. laws, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, shall be fined under title 18, U.S.C., or imprisoned not more than two years, or both. Section 182.6 (a) describes in detail the assistance that the Department of Defense may and may not provide civilian law enforcement agencies.

b. Support During Civil Disturbances

The President is authorized by the Constitution and laws of the United States to employ the Armed Forces of the United States to suppress insurrections, rebellions, and domestic violence under various conditions and circumstances. Planning and preparedness by the Federal Government, including the Department of Defense, for civil disturbances is important due to the potential severity of the consequences of such events for the Nation and the population. The employment of Federal military forces to control civil disturbances shall only occur in a specified civil jurisdiction under specific circumstances as authorized by the President, normally through issuance of an Executive order or other Presidential directive authorizing and directing the Secretary of Defense to provide for the restoration of law and order in a specific State or locality.

III. Costs and Benefits

This rule does not have a significant effect on the economy. However, the Department of Defense may provide support to civilian law enforcement entities on either a reimbursable or non-reimbursable basis depending on the authority under which the support is provided. The benefit to the elements of the Department of Defense providing such support may include a benefit that is substantially equivalent to that derived from military operations or training. Additionally, the recipient civilian law enforcement agencies benefit from the Department of Defense's substantial capabilities when those capabilities are not needed for Department of Defense missions.

Public Comments

On Tuesday, December 28, 2010, the Department of Defense published a proposed rule (75 FR 81547) requesting public comment. Two comments were received. Below are the comments and responses.

Comment #1. Comment on Proposed Rule: 32 CFR Part 182 DOD–2009–OS–0038. The definition given in § 182.3 of ''civil disturbance'' is overly broad and encompasses any number of situations that the Legislature and DOD entities might not have in mind at the time of drafting this rule. It is my recommendation that specific reference be made to DOD Directive 3025.12 within § 182.3 to allay any possible misreading of 32 CFR part 182. If Posse Comitatus is going to be suspended in times other than those specifically authorized by the Constitution, Congress must act to make the language clear and unambiguous. In addition, the definition of ''Emergency Authority'' in § 182.3 and DOD 3025.12 is unclear. In what sort of a civil emergency can prior Presidential authorization be ''impossible'' to obtain. These two definitions read together give an extraordinary degree of latitude to DOD entities within the borders of the United States. Finally, I question whether a rule is the appropriate venue for an expansion of this nature. Perhaps this is a task best left to congress for full public scrutiny and debate. Should this really be a task left to the DOD to make a rule essentially gutting 10 U.S.C.A. 331–4? Despite the fact that this rule has received certification by the Office of Information and Regulatory Affairs (OIRA), I seriously question whether there are not significant implications for its enactment under Executive Order 13132 (Federalism). If it is left to the DOD to determine when force is necessary, absent a Presidential order and absent the cooperation of local authorities, Posse Comitatus is for all intents and purposes at an end.

DoD Response: No action required. This instruction cancels DoD Directive 3025.12. ''Civil disturbance'' is an approved definition in the DoD Dictionary and makes no reference to the Posse Comitatus Act being ''suspended.'' Also this rule does not make reference to the suspension of Posse Comitatus Act. It lists those actions that are permissible and restricted under the Act. The author also recommends that Congress, rather than DoD, make the language ''clear and unambiguous.''

Comment #2. The Posse Comitatus Act, 18 U.S.C. 1385, clearly applies to National Guard troops which have been federalized and are deployed under Title 10 authority within the United States. However, the courts have not definitively ruled on whether the Act applies to troops deployed under Title 32, and generally it is assumed that the act does not apply under those circumstances. If § 182.4(b) of this rule is meant to clearly state that the National Guard is, in fact, to act in compliance with the restrictions of the Posse Comitatus Act while in support of civilian law enforcement officials while deployed under Title 32 authority as well as Title 10, then this is a welcome clarification of DoD policy.

DoD Response: No action required. National Guard forces operating under Title 32 are under State control, and the Posse Comitatus Act would not apply. State law governs what actions State officials and State National Guard forces may take.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been certified that 32 CFR part 182 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Sec. 202, Pub. L. 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 182 does not contain a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 182 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule establishes procedures and assigns responsibilities within DoD for assisting civilian law enforcement agencies, therefore, it is not expected that small entities will be affected because there will be no economically significant regulatory requirements placed upon them.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 182 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 182 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the national government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 182

Armed forces, Law enforcement.

Accordingly, 32 CFR part 182 is added to read as follows:

PART 182—DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES

Sec.

182.1 Purpose.
182.2 Applicability and scope.
182.3 Definitions.
182.4 Policy.
182.5 Responsibilities.
182.6 Procedures.

Authority: 10 U.S.C. 113, 331–334, 371–382, 2576, and 2667; 14 U.S.C. 141; 16 U.S.C. 23, 78, 593, and 1861; 18 U.S.C. 112, 351, 831, 1116, 1385, and 1751; 22 U.S.C. 408, 461–462; 25 U.S.C.180; 31 U.S.C. 1535; 42 U.S.C. 97, 1989, and 5121–5207; 50 U.S.C. 1621–1622; and Public Law 94–524.

§ 182.1 Purpose.

This part:

(a) Establishes DoD policy, assigns responsibilities, and provides procedures for DoD support to Federal, State, Tribal, and local civilian law enforcement agencies, including responses to civil disturbances within the United States, including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States or any other political subdivision thereof in accordance with 32 CFR part 185.

(b) Prescribes the regulations required by 10 U.S.C. 375.

§ 182.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

(b) Applies to the Office of the Inspector General of the Department of Defense (IG, DoD) only to the extent that this part does not conflict with any of the duties and responsibilities assigned to the IG, DoD pursuant to section 8(g) of Appendix, title 5, U.S.C. (also known as ''The Inspector General Act of 1978, as amended'').

(c) Governs all DoD Component planning for and participation in Defense support of civilian law enforcement activities, including domestic emergencies and civil disturbance operations (CDO) (formerly referred to as ''military assistance for civil disturbances'').

(d) Applies to National Guard (NG) personnel only in title 10, U.S.C., status only.

(e) Applies to civilian employees of the DoD Components and the activities of DoD contractors performed in support of the DoD Components.

(f) Does not apply to:

(1) Counternarcotics activities.

(2) Assistance to foreign law enforcement officials.

(3) The Defense Intelligence and Counterintelligence Components, except when providing assistance to civilian law enforcement activities in accordance with paragraph 2.6. of Executive Order 12333 and Procedure 12 of DoD 5240.1–R.[1]

(4) Requests for sensitive support, which are governed by DoD Directive S–5210.36.[2]

(5) NG personnel in State active duty or title 32, U.S.C., status.

(6) Maritime Homeland Security Operations, defined as time-critical requests by the United States Coast Guard for short duration (less than 48 hours) DoD support in countering an immediate maritime security threat, that are governed by the DoD-Department of Homeland Security Memorandum of Agreement for Department of Defense Support to the United States Coast Guard for Maritime Homeland Security.

(7) Aircraft piracy operations conducted pursuant to title 10, U.S.C.

§ 182.3 Definitions.

The following definitions apply to this part:

Civil authorities. Those elected and appointed officers and employees who constitute the government of the United States, the governments of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. possessions and territories, and political subdivisions thereof.

Civil disturbance. Group acts of violence and disorder prejudicial to public law and order.

Civilian law enforcement official. An officer or employee of a civilian Federal, State, local, and tribal law enforcement agency with responsibility for enforcement of the laws within the jurisdiction of that agency.

DoD personnel. Federal military officers and enlisted personnel and civilian employees of the Department of Defense.

Domestic emergencies. Emergencies affecting the public welfare and occurring within the 50 states, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof, as a result of enemy attack, insurrection, civil disturbance, earthquake, fire, flood, or other public disasters or equivalent emergencies that endanger life and property or disrupt the usual process of government. Domestic emergencies include civil defense emergencies, civil disturbances, major disasters, and natural disasters.

[1] Available at *http://www.dtic.mil/whs/directives/corres/pdf/524001r.pdf.*

[2] Authorized users may obtain a copy at *www.dtic.smil.mil/whs/directives.* Others may send a written request by email to *USDI.Pubs@osd.mil.*

Emergency authority. A Federal military commander's authority, in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because:

(1) Such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order; or

(2) Duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions.

Explosives or munitions emergency. A situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

Law enforcement agency. Any of a number of agencies (outside the Department of Defense) chartered and empowered to enforce U.S. laws in the following jurisdictions: the United States, a State (or political subdivision) of the United States, a territory (or political subdivision) of the United States, a federally recognized Native American tribe or Alaskan Native Village, or within the borders of a host nation.

§ 182.4 Policy.

It is DoD policy that:

(a) The Department of Defense shall be prepared to support civilian law enforcement agencies consistent with the needs of military preparedness of the United States, while recognizing and conforming to the legal limitations on direct DoD involvement in civilian law enforcement activities.

(b) Support of civilian law enforcement agencies by DoD personnel shall be provided in accordance with 18 U.S.C. 112, 351, 831, 1116, 1751, and 1385 (also known and hereinafter referred to as ''The Posse Comitatus Act, as amended''); 10 U.S.C. chapter 18; 2 U.S.C. 1970 (for support to the U.S. Capitol Police); and other Federal laws, including those protecting the civil rights and civil liberties of individuals, as applicable.

(c) The restrictions in § 182.6(a)(1)(iii) shall apply to all actions of DoD personnel worldwide.

(d) Exceptions, based on compelling and extraordinary circumstances, may be granted to the restrictions in § 182.6(a)(1)(iii) for assistance to be provided outside the United States; only the Secretary of Defense or Deputy Secretary of Defense may grant such exceptions.

(e) Requests for law enforcement support shall be evaluated using the criteria in 32 CFR part 185.

§ 182.5 Responsibilities.

(a) The Under Secretary of Defense for Policy (USD(P)) shall establish DoD policy governing defense support of civilian law enforcement agencies and facilitate the coordination of that policy with Federal departments and agencies; State, local, and tribal agencies; and the DoD Components, as appropriate.

(b) The Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)), under the authority, direction, and control of the USD(P) and in accordance with DoD Directive 5111.13,[3] ''Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)),'' shall develop, coordinate, recommend, and supervise the implementation of policy for defense support of civilian law enforcement agencies and defense support of civil authorities (DSCA), including law enforcement support activities. In executing this responsibility for DoD law enforcement support activities, the ASD(HD&ASA) shall:

(1) Develop procedures and issue appropriate direction as necessary for defense support of civilian law enforcement agencies in coordination with the General Counsel of the Department of Defense, and in consultation with the Attorney General of the United States (Attorney General), as appropriate, and in accordance with responsibilities assigned in 32 CFR part 185 and DoD Directive 5111.13. This includes tasking the DoD Components to plan for and to commit DoD resources in response to requests from civil authorities for CDO (such a commitment of DoD resources for CDO must be authorized by the President of the United States and directed by the Secretary of Defense).

(2) Serve as the principal point of contact between the Department of Defense and the Department of Justice for planning and executing CDO.

(3) Coordinate with civilian law enforcement agencies on policies to further DoD cooperation with civilian law enforcement agencies.

(4) Provide guidance for the use of Reserve Component personnel in support of civilian law enforcement agencies, in coordination with the Secretaries of the Military Departments and the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)), and with the Chief, National Guard Bureau (NGB), as appropriate. This will include guidance for use by approving authorities in evaluating the effect on military preparedness of requests for civilian law enforcement assistance that may involve use of the Reserve Components.

(5) Assist in the development of policy regulating plans, procedures, and requirements of the DoD Components with authority over defense resources that may be employed to provide law enforcement support.

(6) Inform the ASD(RA) of all requests for assistance by civilian law enforcement agencies that may be met using Reserve Component personnel and resources.

(i) Inform the Chief, NGB, of all requests for assistance by civilian law enforcement agencies that may be met using NG personnel.

(ii) Coordinate with the ASD(RA) and others as appropriate regarding duty status policies (e.g., performance of duty pursuant to 10 U.S.C. 331–334 and 371–382).

(7) Coordinate with the Chairman of the Joint Chiefs of Staff (CJCS) in advance of the commitment of any Federal military forces.

(8) Coordinate with the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense, when providing assistance to civilian law enforcement agencies to ensure an appropriate funding approach in accordance with § 182.6(g).

(9) In coordination with the Under Secretary of Defense for Intelligence (USD(I)), the CJCS, the Commanders of the Combatant Commands with DSCA responsibilities, and the Secretaries of the Military Departments, establish protocols and guidance for ensuring that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

(10) Ensure, in coordination with the Assistant Secretary of Defense for

[3] Available at *http://www.dtic.mil/whs/directives/corres/pdf/511113p.pdf.*

Special Operations and Low-Intensity Conflict (ASD(SO/LIC)), the proper use of electronic counter-measures (ECM) by or in support of DoD explosive ordnance disposal (EOD) personnel when supporting civil authorities is addressed in interagency agreements and contingency plans.

(c) The USD(I) shall:

(1) Establish DoD processes and procedures to provide support to civilian law enforcement officials with Defense Intelligence Component resources in accordance with appropriate statutory authorities and DoD and Intelligence Community policy.

(2) Facilitate consultation on DoD policy regarding intelligence support of law enforcement officials, with appropriate Federal departments and agencies; State, local, and tribal agencies; and the DoD Components.

(d) The IG, DoD, shall issue guidance on cooperation with civilian law enforcement officials with respect to audits and investigations conducted, supervised, monitored, or initiated pursuant to DoD Directive 5106.01,[4] ''Inspector General of the Department of Defense (IG DoD).''

(e) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall monitor and oversee the development of integrated training capabilities related to defense support to civilian law enforcement officials and the integration of these training capabilities into exercises and training to build, sustain, and assess readiness in accordance with DoD Directive 1322.18,[5] ''Military Training.''

(f) The ASD(RA), under the authority, direction, and control of the USD(P&R), shall assist the ASD(HD&ASA) in the development of guidance for use by approving authorities in evaluating the effect on military preparedness of requests for civilian law enforcement assistance that may involve use of the Reserve Components.

(g) The Heads of the DoD Components shall:

(1) Strictly comply with and disseminate throughout their Components the guidance issued by the ASD(HD&ASA) pursuant to paragraph (b) of this section.

(2) Identify appropriate resources for civilian law enforcement support that are consistent with law and DoD policy to carry out the intent of this part.

(3) Review training and operational programs to determine how and where assistance can best be provided to civilian law enforcement officials, consistent with the responsibilities established in this section. This review should include recommendations regarding activities for which reimbursement could be waived in accordance with § 182.6(g)(2).

(4) Issue implementing guidance, in coordination with the ASD(HD&ASA), incorporating the procedures in this part, including:

(i) Procedures for prompt transfer of relevant information to law enforcement agencies.

(ii) Procedures for establishing local contact points in subordinate commands for purposes of coordination with Federal, State, tribal, and local civilian law enforcement officials.

(iii) Guidelines for evaluating requests for assistance in terms of effect on military readiness of the United States.

(5) Inform the CJCS of all requests requiring approval of the ASD(HD&ASA) or the Secretary of Defense, in accordance with this part.

(h) The Secretaries of the Military Departments, in addition to the responsibilities in paragraph (g) of this section, shall:

(1) Provide resources to the DoDComponents, consistent with DoD policies, goals, and objectives, to carry out the purpose of this part.

(2) Coordinate with the Commanders of the Combatant Commands with DSCA responsibilities to ensure that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

(i) The CJCS, in addition to the responsibilities in paragraph (g) of this section, shall:

(1) Assist the ASD(HD&ASA) in developing recommendations for responding to requests for CDO and developing interagency policies on CDO.

(2) Develop processes to evaluate the effect of requests for civilian law enforcement assistance on military preparedness of the United States.

(3) Advise the Secretary of Defense, ASD(HD&ASA), or Heads of the DoDComponents, upon request, on the effect on military preparedness of the United States of any request for defense assistance with respect to CDO.

(j) The Commanders of the Combatant Commands with DSCA responsibilities, through the CJCS, shall, in addition to the responsibilities in paragraph (g) of this section:

(1) Provide support of civilian law enforcement authorities as directed by the Secretary of Defense.

(2) Implement the provisions of this part in appropriate training and exercises.

(3) When designated as a supported commander, coordinate with supporting DoDComponents all reimbursement for assistance provided under the provisions of this part.

(4) When designated as a supported commander, coordinate with the CJCS, the ASD(HD&ASA), and the ASD(SO/LIC) (for the employment of special operations forces) for all military preparations and operations, including the employment of Federal military forces as requested by the Attorney General and approved by the Secretary of Defense, as a result of any domestic emergency, including a terrorist incident, civil disturbance, or a natural disaster. Commanders shall observe all such law enforcement policies as the Attorney General may determine appropriate.

(5) For a terrorist incident having the potential for a request for military assistance by mutual agreement of DoD and the Federal Bureau of Investigation (FBI), designated Combatant Commanders may dispatch observers to the incident site to evaluate the situation. Any dispatch of DoD counterterrorism forces must be specifically authorized by the Secretary of Defense through the CJCS.

(6) Coordinate with the Secretaries of the Military Departments to ensure that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

(k) The Commanders of U.S. Northern Command (USNORTHCOM), U.S. Pacific Command (USPACOM), and U.S. Special Operations Command (USSOCOM), through the CJCS and in addition to the responsibilities in paragraphs (g) and (j) of this section, shall:

(1) Serve as the DoD planning agents for support of civilian law enforcement activities, including CDO, following the guidance of the ASD(HD&ASA) and in coordination with the CJCS.

(2) Lead planning activities for support of civilian law enforcement activities, including CDO, of the DoDComponents in accordance with § 182.6(b)(3). Serve as the DoD financial managers for their respective CDO operations in accordance with § 182.6(g)(2).

(l) The Chief, NGB, shall:

(1) Implement the procedures in this part.

(2) Assist the ASD(HD&ASA) in accordance with DoD Directive

[4] Available at *http://www.dtic.mil/whs/directives/corres/pdf/510601p.pdf.*

[5] Available at *http://www.dtic.mil/whs/directives/corres/pdf/132218p.pdf.*

5105.77,[6] ''National Guard Bureau (NGB),'' in developing policy guidance regarding the use of NG personnel for DoD support of civilian law enforcement agencies.

(3) Assist the ASD(HD&ASA) in the development of policy guidance for use by approving authorities in evaluating the effect on military preparedness if NG personnel are used to fulfill requests for civilian law enforcement assistance.

(4) Serve as an advisor to the Commanders of the Combatant Commands on NG matters pertaining to Combatant Command responsibilities under this part, and support planning and coordination for such activities as requested by the CJCS or the Commanders of other Combatant Commands.

(5) On all matters pertaining to the NG, serve as the channel of communications between: the Secretary of Defense, the CJCS, and the DoD Components (other than the Department of the Army and the Department of the Air Force); and the States. The Chief, NGB, shall keep the Secretaries of the Army and the Air Force informed of all communications unless otherwise directed by the Secretary of Defense.

(6) Coordinate the sharing of State contingency plans for the use of non-federalized NG forces in CDO roles between the responsible State Adjutants General and the responsible Combatant Commander.

§ 182.6 Procedures.

(a) *Participation of DoD Personnel in Civilian Law Enforcement Activities*—(1) *Guiding Statutory Requirements and Supporting Policies*—(i) *Statutory Restrictions.* (A) The primary restriction on DoD participation in civilian law enforcement activities is the Posse Comitatus Act. It provides that whoever willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute U.S. laws, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, shall be fined under title 18, U.S.C., or imprisoned not more than 2 years, or both.

(B) 10 U.S.C. 375 provides that the Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under 10 U.S.C. chapter 18 does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

(ii) *Permissible Direct Assistance.* Categories of active participation in direct law-enforcement-type activities (e.g., search, seizure, and arrest) that are not restricted by law or DoD policy are:

(A) Actions taken for the primary purpose of furthering a DoD or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities. This does not include actions taken for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of the Posse Comitatus Act. Actions under this provision may include (depending on the nature of the DoD interest and the authority governing the specific action in question):

(*1*) Investigations and other actions related to enforcement of the Uniform Code of Military Justice (10 U.S.C. chapter 47).

(*2*) Investigations and other actions that are likely to result in administrative proceedings by the Department of Defense, regardless of whether there is a related civil or criminal proceeding. (See DoD Instruction 5525.07 [7] and the Memorandum of Agreement Between the Attorney General and the Secretary of Defense with respect to matters in which the Department of Defense and the Department of Justice both have an interest.)

(*3*) Investigations and other actions related to a commander's inherent authority to maintain law and order on a DoD installation or facility.

(*4*) Protection of classified defense information or equipment or controlled unclassified information (e.g., trade secrets and other proprietary information), the unauthorized disclosure of which is prohibited by law.

(*5*) Protection of DoD personnel, equipment, and official guests.

(*6*) Such other actions that are undertaken primarily for a military or foreign affairs purpose.

(B) Audits and investigations conducted by, under the direction of, or at the request of the IG, DoD, pursuant to the Inspector General Act of 1978, as amended.

(C) When permitted under emergency authority in accordance with 32 CFR part 185, Federal military commanders have the authority, in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because:

(*1*) Such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order; or

(*2*) When duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions. Federal action, including the use of Federal military forces, is authorized when necessary to protect Federal property or functions.

(D) DoD actions taken pursuant to 10 U.S.C. 331–334, relating to the use of Federal military forces in specified circumstances with respect to insurrection, domestic violence, or conspiracy that hinders the execution of State or Federal law.

(E) Actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations. The laws that permit direct DoD participation in civilian law enforcement include:

(*1*) Protection of national parks and certain other Federal lands consistent with 16 U.S.C. 23, 78, and 593.

(*2*) Enforcement of the Fishery Conservation and Management Act of 1976, as amended, pursuant to 16 U.S.C. 1861(a).

(*3*) Assistance in the case of crimes against foreign officials, official guests of the United States, and other internationally protected persons pursuant to 18 U.S.C. 112 and 1116.

(*4*) Assistance in the case of crimes against Members of Congress, Members-of-Congress-elect, Justices of the Supreme Court and nominees, and certain senior Executive Branch officials and nominees in accordance with 18 U.S.C. 351.

(*5*) Assistance in the case of crimes involving nuclear materials in accordance with 18 U.S.C. 831.

(*6*) Protection of the President, Vice President, and other designated dignitaries in accordance with 18 U.S.C. 1751 and Public Law 94–524.

(*7*) Actions taken in support of the neutrality laws in accordance with 22 U.S.C. 408 and 461–462.

(*8*) Removal of persons unlawfully present on Indian lands in accordance with 25 U.S.C. 180.

(*9*) Execution of quarantine and certain health laws in accordance with 42 U.S.C. 97 and DoD Instruction

[6] Available at *http://www.dtic.mil/whs/directives/corres/pdf/510577p.pdf.*

[7] Available at *http://www.dtic.mil/whs/directives/corres/pdf/552507p.pdf.*

6200.03,[8] ''Public Health Emergency Management Within the Department of Defense.''

(*10*) Removal of unlawful enclosures from public lands in accordance with 43 U.S.C. 1065.

(*11*) Protection of the rights of a discoverer of an island covered by 48 U.S.C. 1418.

(*12*) Support of territorial governors if a civil disorder occurs, in accordance with 48 U.S.C. 1422 and 1591.

(*13*) Actions in support of certain customs laws in accordance with 50 U.S.C. 220.

(F) Actions taken to provide search and rescue support domestically under the authorities provided in the National Search and Rescue Plan and DoD Instruction 3003.01.[9]

(iii) *Restrictions on Direct Assistance.* (A) Except as authorized in this part (e.g., in paragraphs (a) and (b) of this section), DoD personnel are prohibited from providing the following forms of direct civilian law enforcement assistance:

(*1*) Interdiction of a vehicle, vessel, aircraft, or other similar activity.

(*2*) A search or seizure.

(*3*) An arrest; apprehension; stop and frisk; engaging in interviews, interrogations, canvassing, or questioning of potential witnesses or suspects; or similar activity.

(*4*) Using force or physical violence, brandishing a weapon, discharging or using a weapon, or threatening to discharge or use a weapon except in self-defense, in defense of other DoD persons in the vicinity, or in defense of non-DoD persons, including civilian law enforcement personnel, in the vicinity when directly related to an assigned activity or mission.

(*5*) Evidence collection; security functions; crowd and traffic control; and operating, manning, or staffing checkpoints.

(*6*) Surveillance or pursuit of individuals, vehicles, items, transactions, or physical locations, or acting as undercover agents, informants, investigators, or interrogators.

(*7*) Forensic investigations or other testing of evidence obtained from a suspect for use in a civilian law enforcement investigation in the United States unless there is a DoD nexus (e.g., the victim is a member of the Military Services or the crime occurred on an installation under exclusive DoD jurisdiction) or the responsible civilian law enforcement official requesting such testing declares in writing that the evidence to be examined was obtained by consent. Requests for exceptions to this restriction must be made through channels to the ASD(HD&ASA), who will evaluate, in coordination with the General Counsel of the Department of Defense, whether to seek Secretary of Defense authorization for an exception to policy.

(B) The use of deputized State or local law enforcement powers by DoD uniformed law enforcement personnel shall be in accordance with DoD Instruction 5525.13,[10] ''Limitation of Authority to Deputize DoD Uniformed Law Enforcement Personnel by State and Local Governments.''

(C) Except as otherwise directed by the Secretary of Defense, the rules for the use of force and authority for the carrying of firearms by DoD personnel providing authorized support under this part shall be in accordance with DoD Directive 5210.56,[11] ''Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities,'' and any additional Secretary of Defense-approved rules for the use of force contained in CJCS Instruction 3121.01B, ''Standing Rules of Engagement Standing Rules for the Use of Force for U.S. Forces.''

(D) Exceptions to these restrictions for assistance may be granted when the assistance is to be provided outside the United States. Only the Secretary of Defense or the Deputy Secretary of Defense may grant such exceptions, based on compelling and extraordinary circumstances.

(iv) *Use of DoD Personnel to Operate or Maintain Equipment.* The use of DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment shall be limited to situations when the use of non-DoD personnel for operation or maintenance of such equipment would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise military preparedness of the United States. In general, the head of the civilian law enforcement agency may request a DoD Component to provide personnel to operate or maintain, or to assist in operating or maintaining, equipment for the civilian agency. This assistance shall be subject to this guidance:

(A) Such assistance may not involve DoD personnel directly participating in a law enforcement operation (as described in paragraph (a)(1)(iii) of this section).

(B) The performance of such assistance by DoD personnel shall be at a location where there is not a reasonable likelihood of a confrontation between law enforcement personnel and civilians.

(C) The use of DoD aircraft to provide transportation for civilian law enforcement agencies may be provided only in accordance with DoD 4515.13–R.[12]

(D) A request for DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment must be made pursuant to 10 U.S.C. 374 or other applicable law that permits DoD personnel to provide such assistance to civilian law enforcement officials. A request that is made pursuant to 10 U.S.C. 374 must be made by the head of a civilian agency empowered to enforce any of these laws:

(*1*) 21 U.S.C. 801–904 and 951–971.

(*2*) 8 U.S.C. 1324–1328.

(*3*) A law relating to the arrival or departure of merchandise, as defined in 19 U.S.C. 1401, into or out of the customs territory of the United States, as defined in 19 U.S.C. 1401, or any other territory or possession of the United States.

(*4*) 46 U.S.C. chapter 705.

(*5*) Any law, foreign or domestic, prohibiting terrorist activities.

(E) In addition to the assistance authorized under paragraph (a)(1)(ii)(A) of this section:

(*1*) DoD personnel may be made available to a Federal law enforcement agency to operate or assist in operating equipment, to the extent the equipment is used in a supporting role, with respect to:

(*i*) A criminal violation of the laws specified in paragraph (a)(1)(iv)(D) of this section.

(*ii*) Assistance that the Federal law enforcement agency is authorized to furnish to a State, local, or foreign government that is involved in the enforcement of laws similar to those in paragraph (a)(1)(iv)(D) of this section.

(*iii*) A foreign or domestic counter-terrorism operation, including support of FBI Joint Terrorism Task Forces.

(*iv*) Transportation of a suspected terrorist from a foreign country to the United States to stand trial.

(*2*) DoD personnel made available to a civilian law enforcement agency pursuant to 10 U.S.C. 374 may operate equipment for:

(*i*) Detection, monitoring, and communication of the movement of air and sea traffic.

[8] Available at *http://www.dtic.mil/whs/directives/corres/pdf/620003p.pdf.*

[9] Available at *http://www.dtic.mil/whs/directives/corres/pdf/300301p.pdf.*

[10] Available at *http://www.dtic.mil/whs/directives/corres/pdf/552513p.pdf.*

[11] Available at *http://www.dtic.mil/whs/directives/corres/pdf/521056p.pdf.*

[12] Available at *http://www.dtic.mil/whs/directives/corres/pdf/451513r.pdf.*

(*ii*) Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and, if the initial detection occurred outside of the boundary, within the United States, not to exceed 25 miles of the boundary.

(*iii*) Aerial reconnaissance (does not include satellite reconnaissance).

(*iv*) Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.

(*v*) Operation of equipment to facilitate communications in connection with the law enforcement programs specified in paragraph (a)(1)(iv)(D) of this section.

(*vi*) The following activities that are subject to joint approval by the Secretary of Defense and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States): the transportation of civilian law enforcement personnel along with any other civilian or military personnel who are supporting, or conducting, a joint operation with civilian law enforcement personnel; the operation of a base of operations for civilian law enforcement and supporting personnel; and the transportation of suspected terrorists from foreign countries to the United States for trial (so long as the requesting Federal law enforcement agency provides all security for such transportation and maintains custody over the suspect through the duration of the transportation).

(*vii*) The detection, monitoring, and tracking of the movement of weapons of mass destruction under the circumstances described above when outside the United States.

(F) DoD personnel made available to operate equipment for the purposes in paragraphs (a)(1)(iv)(E)(*2*)(*i*) and (a)(1)(iv)(E)(*2*)(*iv*) of this section may continue to operate such equipment in cases involving the pursuit of vessels or aircraft into the land area of the United States where the detection began outside such land area.

(G) With the approval of the Secretary of Defense, DoD personnel may be made available to any Federal, State, or local civilian law enforcement agency to operate equipment for purposes other than described in paragraph (a)(2) of this section, only to the extent that such support does not involve direct assistance by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law and is authorized by the Secretary of Defense.

(H) Nothing in this part restricts the authority of Federal military commanders to take emergency action to prevent loss of life or wanton destruction of property as provided in paragraph (a)(1)(ii)(C) of this section.

(I) When DoD personnel are otherwise assigned to provide assistance with respect to the laws specified in paragraph (a)(1)(ii)(E) of this section, the participation of such personnel shall be consistent with the limitations in such laws, if any, and such restrictions as may be established by policy or the DoD Components concerned.

(v) *Expert Advice.* DoD Components may provide, subject to paragraph (a)(5) of this section, expert advice to Federal, State, or local law enforcement officials in accordance with 10 U.S.C. 373. This does not permit direct assistance by DoD personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this section.

(vi) *Training.* (A) The DoD Components may provide, subject to paragraph (a)(5) of this section, training to Federal, State, and local civilian law enforcement officials. This does not permit large-scale or elaborate DoD training, and does not permit regular or direct involvement of DoD personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this section.

(B) Training of Federal, State, and local civilian law enforcement officials shall be provided according to this guidance:

(*1*) Assistance shall be limited to situations when the use of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise military preparedness of the United States.

(*2*) Assistance may not involve DoD personnel participating in a law enforcement operation, except as otherwise authorized by law.

(*3*) Assistance of DoD personnel shall be provided at a location where there is not a reasonable likelihood of a confrontation between law enforcement personnel and civilians, except as otherwise authorized by this part.

(C) This paragraph does not apply to advanced military training, which is addressed in Deputy Secretary of Defense Memorandum, ''DoD Training Support to U.S. Civilian Law Enforcement Agencies,'' June 29, 1996,[13] and Deputy Secretary of Defense Memorandum, ''Request for Exception to Policy,'' November 12, 1996.[14] Additional exceptions to the policy in Deputy Secretary of Defense Memorandum, ''DoD Training Support to U.S. Civilian Law Enforcement Agencies,'' may be requested on a case-by-case basis. Requests for such exceptions shall be forwarded through the ASD(HD&ASA). Advanced military training:

(*1*) Includes advanced marksmanship training, including sniper training, military operations in urban terrain (MOUT), advanced MOUT, close quarters battle/close quarters combat, and similar training.

(*2*) Does not include basic military skills such as basic marksmanship, patrolling, mission planning, medical, and survival.

(vii) *Other Permissible Assistance.* These forms of indirect assistance are not prohibited by law or DoD policy:

(A) Transfer to Federal, State, or local law enforcement officials of information acquired in the normal course of DoD operations that may be relevant to a violation of any Federal or State laws.

(B) Information obtained through procedures, means, or devices authorized by Federal law exclusively for use in gathering, obtaining, or acquiring national intelligence or military intelligence may be transferred unless specifically prohibited by law. Information shall not be transferred if it meets any of the following criteria:

(*1*) The acquisition of that information violates applicable law protecting the privacy or constitutional rights of any person, including rights protected by 5 U.S.C. 552a (also known as ''The Privacy Act of 1974, as amended'').

(*2*) It would have been illegal for those civilian law enforcement officials to have obtained the information or employ the procedures, means, or devices used by the DoD Component to obtain the information.

(C) Such other actions, approved in accordance with procedures established by the DoD Components concerned, that do not subject civilians to the use of DoD power that is regulatory, prescriptive, proscriptive, or compulsory.

(2) *Exceptions Based on Status.* The restrictions in paragraph (a) of this section do not apply to:

(i) A member of a Reserve Component when not on active duty, active duty for training, or inactive duty for training.

(ii) A member of the NG when not in Federal service.

(iii) A civilian employee. If the civilian employee is under the direct

[13] Available from OASD(HD&ASA)/Room 3D247, 2600 Defense Pentagon, Washington, DC 20301.

[14] Available from OASD(HD&ASA)/Room 3D247, 2600 Defense Pentagon, Washington, DC 20301.

control of a military officer, assistance will not be provided unless it is permitted by paragraph (a)(3) of this section.

(iv) A member of a Military Service when off duty and in a private capacity. A Service member is acting in a private capacity when he or she responds on his or her own volition to assist law enforcement officials instead of acting under the direction or control of DoD authorities.

(v) A member of the Civil Air Patrol, except when performing missions pursuant to 10 U.S.C. 9442(b).

(3) *Exceptions Based on Military Service.* By policy, Posse Comitatus Act restrictions (as well as other restrictions in this part) are applicable to the Department of the Navy (including the Marine Corps) with such exceptions as the Secretary of Defense may authorize in advance on a case-by-case basis.

(i) Such exceptions shall include requests from the Attorney General for assistance pursuant to 21 U.S.C. 873(b).

(ii) Requests for approval of other exceptions should be made by a senior official of the civilian law enforcement agency concerned, who verifies that:

(A) The size or scope of the suspected criminal activity poses a serious threat to the interests of the United States and enforcement of a law within the jurisdiction of the civilian agency would be seriously impaired if the assistance were not provided because civilian assets are not available to perform the mission; or

(B) Civilian law enforcement assets are not available to perform the mission, and temporary assistance is required on an emergency basis to prevent loss of life or wanton destruction of property.

(4) *Military Readiness.* Assistance may not be provided if such assistance could adversely affect military preparedness. Implementing documents issued by the Heads of the DoD Components shall ensure that approval for the disposition of equipment is vested in officials who can assess the effect of such disposition on military preparedness.

(5) *Approval Authority.* Requests by civilian law enforcement officials for use of DoD personnel to provide assistance to civilian law enforcement agencies shall be forwarded to the appropriate approval authority.

(i) The Secretary of Defense is the approval authority for requests for direct assistance in support of civilian law enforcement agencies, including those responding with assets with the potential for lethality, except for the use of emergency authority as provided in paragraph (a)(1)(ii)(C) of this section and in 32 CFR part 185, and except as otherwise provided below.

(ii) Requests that involve the Defense Intelligence and Counterintelligence entities are subject to approval by the Secretary of Defense and the guidance in DoD Directive 5240.01 [15] and DoD 5240.1–R.

(iii) The Secretaries of the Military Departments and the Directors of the Defense Agencies may, in coordination with the ASD(HD&ASA), approve the use of DoD personnel:

(A) To provide training or expert advice in accordance with paragraphs (a)(1)(v) and (a)(1)(vi) of this section.

(B) For equipment maintenance in accordance with paragraph (a)(1)(iv) of this section.

(C) To monitor and communicate the movement of air and sea traffic in accordance with paragraphs (a)(1)(iv)(E)(*2*)(*i*) and (a)(1)(iv)(E)(*2*)(*iv*) of this section.

(iv) All other requests, including those in which subordinate authorities recommend disapproval, shall be submitted promptly to the ASD(HD&ASA) for consideration by the Secretary of Defense, as appropriate.

(v) The views of the CJCS of shall be obtained on all requests that are considered by the Secretary of Defense or the ASD(HD&ASA), that otherwise involve personnel assigned to a unified or specified command, or that may affect military preparedness.

(vi) All requests that are to be considered by the Secretary of Defense or the ASD(HD&ASA) that may involve the use of Reserve Component personnel or equipment shall be coordinated with the ASD(RA). All requests that are to be considered by the Secretary of Defense or the ASD(HD&ASA) that may involve the use of NG personnel also shall be coordinated with the Chief, NGB. All requests that are to be considered by the Secretary of Defense or the ASD(HD&ASA) that may involve the use of NG equipment also shall be coordinated with the Secretary of the Military Department concerned and the Chief, NGB.

(b) *DoD Support of CDO.* (1) *Guiding Statutory Requirements and Supporting Policies.* (i) The President is authorized by the Constitution and laws of the United States to employ the Armed Forces of the United States to suppress insurrections, rebellions, and domestic violence under various conditions and circumstances. Planning and preparedness by the Federal Government, including DoD, for civil disturbances is important due to the potential severity of the consequences of such events for the Nation and the population.

(ii) The primary responsibility for protecting life and property and maintaining law and order in the civilian community is vested in State and local governments. Supplementary responsibility is vested by statute in specific agencies of the Federal Government other than DoD. The President has additional powers and responsibilities under the Constitution of the United States to ensure that law and order are maintained.

(iii) Any employment of Federal military forces in support of law enforcement operations shall maintain the primacy of civilian authority, and, unless otherwise directed by the President, responsibility for the management of the Federal response to civil disturbances rests with the Attorney General. The Attorney General is responsible for receiving State requests for Federal military assistance, coordinating such requests with the Secretary of Defense and other appropriate Federal officials, and presenting such requests to the President who will determine what Federal action will be taken.

(iv) The employment of Federal military forces to control civil disturbances shall only occur in a specified civil jurisdiction under specific circumstances as authorized by the President, normally through issuance of an Executive order or other Presidential directive authorizing and directing the Secretary of Defense to provide for the restoration of law and order in a specific State or locality in accordance with 10 U.S.C. 331–334.

(v) Planning by the DoD Components for CDO shall be compatible with contingency plans for national security emergencies, and with planning for DSCA pursuant to 32 CFR part 185. For example:

(A) Guidelines concerning the use of deputized State or local law enforcement powers by DoD uniformed law enforcement personnel are outlined in DoD Instruction 5525.13.

(B) Guidelines concerning the use of deadly force and/or the carrying of firearms by DoD personnel while engaged in duties related to security or law and order, criminal investigations, or counterintelligence investigations; protecting personnel; protecting vital Government assets; or guarding Government installations and sites, property, and persons (including prisoners) are outlined in DoD Directive 5210.56 and any additional Secretary of Defense-approved rules for the use of

[15] Available at *http://www.dtic.mil/whs/directives/corres/pdf/524001p.pdf.*

force contained in CJCS Instruction 3121.01B, ''Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces,'' June 13, 2005.

(2) *DoD Requirements.* (i) Federal military forces shall not be used for CDO unless specifically authorized by the President, except under emergency authority as provided in 32 CFR part 185 and paragraph (a)(1)(ii)(C) of this section.

(ii) Federal military forces shall be made available for CDO as directed by the President. The Secretary of Defense or other authorized DoD official may, where authorized and consistent with the direction of the President, establish the source and composition of those forces to achieve appropriate balance with other national security or DoD priorities.

(iii) Federal military forces employed in CDO shall remain under Secretary of Defense command and control at all times.

(iv) The pre-positioning of Federal military forces for CDO shall not exceed a battalion-sized unit in a single location unless a larger force is authorized by the President.

(v) DoD Components shall not take charge of any function of civil government unless absolutely necessary under conditions of extreme emergency (e.g., when using emergency authority as described in 32 CFR part 185 and paragraph (a)(1)(ii)(C) of this section). Any commander who is directed, or undertakes, to control such functions shall strictly limit DoD actions to emergency needs and shall facilitate the reestablishment of civil responsibility at the earliest time possible.

(3) *CDO Planning.* (i) To ensure essential control and sound management of all Federal military forces employed in CDO, centralized direction from the Secretary of Defense, through the ASD(HD&ASA), shall guide planning by the DoD Components, whether alone or with civil authorities. Execution of CDO missions shall be decentralized through the Commanders of USNORTHCOM, USPACOM, or USSOCOM, or through joint task force commanders, and only when specifically directed by the Secretary of Defense or as described in paragraph (a)(1)(ii)(C) of this section.

(ii) The Commanders of USNORTHCOM, USPACOM, and USSOCOM, as the DoD planning agents for CDO in accordance with § 182.5(k) of this part, shall lead the CDO planning activities of the DoD Components in these areas:

(A) USNORTHCOM. The 48 contiguous States, Alaska, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(B) USPACOM. Hawaii and the U.S. possessions and territories in the Pacific area.

(C) USSOCOM. CDO activities involving special operations forces.

(iii) CDO plans and readiness measures shall foster efficient employment of Federal equipment controlled by NG forces, whether employed under State or Federal authority, as well as other resources of the DoD Components.

(4) *Role of the National Guard.* (i) NG forces in a State active duty status have primary responsibility to support State and local Government agencies for disaster responses and in domestic emergencies, including in response to civil disturbances; such activities would be directed by, and under the command and control of, the Governor, in accordance with State or territorial law and in accordance with Federal law.

(ii) NG forces may be ordered or called into Federal service to ensure unified command and control of all Federal military forces for CDO when the President determines that action to be necessary in extreme circumstances.

(iii) Federal military forces shall conduct CDO in support of the Attorney General or designee (unless otherwise directed by the President) to assist State law enforcement authorities. Federal military forces will always remain under the command and control of the President and Secretary of Defense. Federal military forces also could conduct CDO in concert with State NG forces under the command of a dual-status commander, if determined to be appropriate by the Secretary of Defense and the Governor(s) concerned, or in close coordination with State NG forces using direct liaison.

(iv) Chief, NGB, will coordinate the sharing of State contingency plans for the use of non-federalized NG forces in CDO roles between the responsible State Adjutants General and the responsible Combatant Commander.

(5) *Cooperation with Civil Authorities.* (i) The Attorney General shall receive and coordinate preliminary requests for CDO from civil authorities pursuant to 10 U.S.C. 331–334.

(A) Formal requests for CDO shall be addressed to the President.

(B) The Attorney General may assign a component law enforcement agency of the Department of Justice, such as the FBI or Bureau of Alcohol, Tobacco, Firearms, and Explosives, to lead the operational response to a civil disturbance incident.

(C) The President may provide, through the Attorney General or other Federal official, a personal representative to communicate the President's policy guidance to the military commander conducting CDO. That representative may augment, but shall not replace, the military chain of command. In addition, an individual may be designated by the Attorney General as the Senior Civilian Representative of the Attorney General.

(ii) The ASD(HD&ASA) shall represent DoD in coordinating CDO planning and execution with the Department of Justice, and other Federal and State law enforcement agencies, as appropriate.

(6) *Approval Authority.* (i) The President is the approval authority for requests for assistance for CDO, except for emergency authority as provided in paragraph (a)(1)(ii)(C) of this section and in 32 CFR part 185.

(ii) If the President directs the use of Federal military forces for CDO, the ASD(HD&ASA) and the CJCS shall provide advice to the Secretary of Defense regarding the employment of DoD personnel and resources to implement the direction of the President. Secretary of Defense approval of such employment shall be communicated to the Combatant Commanders through the CJCS.

(iii) The ASD(HD&ASA) shall provide any request, contingency plan, directive, or order affecting the employment of special operations forces to the ASD(SO/LIC), who supervises the activities of those forces on behalf of the Secretary of Defense in accordance with DoD Directive 5111.10,[16] ''Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD(SO/LIC)).''

(iv) Additionally, the ASD(HD&ASA), in coordination with the ASD(SO/LIC) for the employment of special operations forces, shall provide overall policy oversight of the employment of DoD personnel and resources for CDO responding to terrorist incidents and other similar events in coordination with the CJCS.

(c) *Domestic EOD Support of Civilian Law Enforcement Agencies.*

(1) *Guiding Statutory Requirements and Supporting Policies.* DoD EOD personnel may provide immediate response for EOD support in support of civil authorities, when requested, in accordance with 32 CFR part 185 and may provide for disposition of military munitions in accordance with 40 CFR parts 260–270.

(2) *DoD Requirements.* (i) DoD personnel will not participate in search

[16] Available at *http://www.dtic.mil/whs/directives/corres/pdf/511110p.pdf.*

or seizure of ordnance as part of a civilian law enforcement investigation. DoD personnel may, as described in paragraph (c) of this section, render safe military munitions and take possession of military munitions for appropriate disposition at the request of civilian law enforcement officials when such military munitions have already been discovered and seized by civilian law enforcement personnel.

(ii) DoD officials, including local military commanders, may provide EOD and explosive detection dog support to local civil authorities to save lives, prevent human suffering, and mitigate great property damage under imminently serious conditions in accordance with 32 CFR part 185. Guidance for planning and execution requirements for Combatant Commanders and the Military Departments in responding to DoD military munitions is found in DoD Manual 6055.09, Volume 7,[17] ''DoD Ammunition And Explosives Safety Standards: Munitions, and Material Potentially Presenting an Explosive Hazard.''

(iii) Such an immediate response may include actions to provide advice and assistance to civil authorities, when requested, in the mitigation, rendering safe, and disposition of suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat.

(iv) Military munitions, discarded military munitions, and UXO in an unauthorized location under the jurisdiction of public officials potentially present an imminent and substantial danger to public safety and health and to the environment, and may require an immediate EOD response.

(A) These conditions include:

(*1*) Items that were illegally removed from military installations.

(*2*) Military munitions that land off range.

(*3*) Munitions located on property formerly leased or owned by DoD (including manufacturing areas, pads, pits, basins, ponds, streams, burial sites, and other locations incident to such operations).

(*4*) Transportation accidents involving military munitions.

(*5*) Unauthorized public possession of military munitions.

(B) Military munitions found in the conditions in paragraph (c)(2)(iv) of this section should be considered extremely hazardous and should not be disturbed or moved until technically qualified EOD personnel assess and determine the hazard.

(C) DoD officials, including local military commanders:

(*1*) Will provide EOD support for military munitions, discarded military munitions, and UXO that have (or appear to have) DoD origins.

(*2*) May, in accordance with 32 CFR part 185, provide EOD support for military munitions or foreign ordnance that do not appear to have DoD origins found in the United States under the conditions in paragraph (c)(2)(iv) of this section.

(v) Rendering safe and disposing of improvised devices, non-military commercial explosives, or similar dangerous articles reported or discovered outside of DoD installations are primarily the responsibility of civil authorities. However, due to the potential lethality and danger to public safety, DoD EOD personnel may provide assistance upon request in accordance with 32 CFR part 185.

(vi) When responding to requests for assistance from civil authorities under immediate response authority pursuant to 32 CFR part 185, the closest capable EOD unit regardless of Military Service will provide support.

(vii) Requests from civil authorities for non-immediate DoD EOD support are subject to approval by the Secretary of Defense. Examples of non-immediate DoD EOD support include, but are not limited to, post-blast analysis, use of DoD material and equipment, and support of pre-planned events. Exceptions include those activities in support of the U.S. Secret Service that, in accordance with DoD Directive 3025.13,[18] ''Employment of DoD Capabilities in Support of the U.S. Secret Service (USSS), Department of Homeland Security (DHS),'' do not require Secretary of Defense approval and those activities undertaken in response to requests for technical assistance or assessment of military munitions that are performed solely for safety purposes.

(viii) DoD EOD forces providing support under immediate response authority under 32 CFR part 185 will also comply with 40 CFR parts 260–270, ''Hazardous Waste Management System: General,'' and other applicable local, State, and Federal laws and regulations, including environmental laws and regulations.

(ix) The National Joint Operations and Intelligence Center (NJOIC) and the FBI's Strategic Information Operations Center shall be advised immediately of the recovery and disposition of military munitions, as well as responses to non-military munitions and explosives. DoD Components also shall ensure that reports are submitted within 72 hours, in accordance with 18 U.S.C. 846 and DoD Manual 5100.76,[19] ''Physical Security of Sensitive Conventional Arms, Ammunitions, and Explosives (AA&E),'' to: Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Bomb Data Center, 99 New York Ave. NE., 8S 295, Washington, DC 20226.

(3) *Planning and Execution.* (i) Combatant Commanders will:

(A) Maintain situational awareness of all EOD elements in support of civil authorities, consolidate Service EOD incident reports, and provide to the ASD(HD&ASA) and the ASD(SO/LIC) a monthly consolidated report highlighting:

(*1*) DoD EOD support of civil authorities, resources, and work-hours expended.

(*2*) Final determination of the item, as well as the agency supported.

(*3*) Final disposition of the hazard, as well as a cost estimate of the support provided.

(*4*) A status of reimbursement by the supported entity. Reimbursement will not be sought for EOD response to military munitions that have (or appear to have) DoD origins.

(B) Coordinate with the DoD Explosives Safety Board and the Executive Manager for EOD Training and Technology to ensure information sharing.

(ii) In situations where DoD EOD personnel are asked to provide support to DOJ/FBI in conducting electronic countermeasures (ECM), such personnel may only employ ECM in the United States if approved by the Secretary of Defense and in accordance with the DOJ program for applying ECM in the United States in response to threats of radio-controlled improvised explosive devices (DOJ Federal ECM Program) approved by the National Telecommunications and Information Administration (NTIA) (see Section 7.25 of the NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management). NTIA has approved the use of DoD military ECM assets in support of the DOJ Federal ECM Program, however, only those DoD military ECM assets/systems

[17] Available at *http://www.dtic.mil/whs/directives/corres/pdf/605509m/605509-M-V7.pdf.*

[18] Available at *http://www.dtic.mil/whs/directives/corres/pdf/302513p.pdf.*

[19] Available at *http://www.dtic.mil/whs/directives/corres/pdf/510076m.pdf.*

that have been approved by NTIA for employment in the United States under the DOJ Federal ECM Program may be used by DoD EOD personnel in providing the requested support to DOJ/FBI.

(A) DoD officials may provide ECM equipment, and expert advice regarding the FBI's use of the equipment, in accordance with paragraph (c)(2) of this section when the FBI has approved use of ECM and when there is insufficient time to obtain Secretary of Defense approval.

(B) All use of ECM equipment or devices while conducting EOD operations supporting civil authorities will be coordinated with and follow procedures established by the FBI's Strategic Information Operations Center and reported to the NJOIC.

(iii) In consideration of the Military Departments' and the Combatant Commanders' planning requirements and in consultation with appropriate local civilian agencies, installation commanders will identify off-installation critical infrastructure and key resources, such as nuclear power stations, power plants, communications hubs, and water treatment plants. Combatant Commanders and other responsible DoD officials will assist in developing priorities for EOD support of civil authorities. Installations without resident EOD forces will develop plans to seek support from the nearest DoD EOD organization.

(iv) Combatant Commanders, as appropriate, will maintain situational awareness of all EOD elements in support of civil authorities, coordinate and de-conflict Military Services' EOD domestic areas of response, and develop consolidated reporting procedures to permit accurate and timely collection of data from the supporting Services.

(v) Service EOD reports shall be used to indicate that DoD is reclaiming accountability of DoD military munitions that were found outside the custody of DoD. The Military Departments will forward reports of reclaimed military munitions to installations for ammunitions logistics management and submission to the DoD Explosives Safety Board in accordance with DoD Manual 6055.09, Volume 7, DoD Manual 5100.76, and DoD Instruction 5160.68,[20] ''Single Manager for Conventional Ammunition (SMCA): Responsibilities of the SMCA, the Military Services, and the United States Special Operations Command (USSOCOM).''

(vi) Reimbursement is not required for EOD support involving military munitions, discarded military munitions, and UXO that have DoD origins or appear to have DoD origins. Combatant Commanders will coordinate with the DoD Explosives Safety Board and the Executive Manager for EOD Training and Technology to ensure information sharing.

(vii) In accordance with DoD Instruction 6055.17,[21] ''DoD Installation Emergency Management (IEM) Program,'' and applicable Military Department issuances, commanders of EOD organizations will:

(A) Coordinate with installation emergency managers to:

(*1*) Establish local processes and procedures to respond to and report military and non-military munitions support requests from civil law enforcement agencies.

(*2*) Determine priorities of EOD support for protecting critical infrastructure and key resources when requested.

(B) Participate in installation emergency response exercises.

(C) Determine training requirements for conducting DSCA response missions.

(4) *Cooperation with Civil Authorities.* (i) DoD EOD forces will maintain relationships with local, State, tribal, and other Federal bomb disposal and other law enforcement agency assets near their geographical locations. Such relationships may include conferences and training exercises to increase the interoperability and integration with local bomb squad agencies, to improve the response capabilities to civil authorities when requested, and to enhance the consolidated response capabilities.

(ii) DoD EOD personnel may conduct UXO and explosive ordnance awareness and education programs that inform and promote public safety of the hazards associated with military munitions and explosive items.

(d) *Domestic terrorist incident support.* (1) *DoD guidance.* Only the Secretary of Defense may authorize the use of DoD personnel in support of civilian law enforcement officials during a domestic terrorism incident, except as described in paragraph (d)(1)(ii) of this section. The Commanders of USNORTHCOM, USPACOM, and USSOCOM, in coordination with the CJCS, ASD(HD&ASA), and ASD(SO/LIC), have primary responsibility for all military preparations and—when authorized by the Secretary of Defense—operations, including the employment of armed Federal military forces at the scene of any domestic terrorist incident.

(i) In discharging those functions, the Commanders of USNORTHCOM, USPACOM, and USSOCOM shall operate in a manner consistent with law enforcement policies established by the Attorney General.

(ii) When a terrorist incident develops that has a potential for military involvement, the Commanders of USNORTHCOM, USPACOM, and USSOCOM may dispatch military observers to the incident site, with the concurrence of the senior FBI official at the site, to appraise the situation before any decision is made by the Secretary of Defense to commit Federal military forces. Any dispatch of U.S. counterterrorism forces as observers must be specifically authorized by the Secretary of Defense through the CJCS.

(2) *Requirement for vocal orders to be published.* When the Secretary of Defense authorizes U.S. counterterrorism forces to assist with the resolution of a domestic terrorist incident, the CJCS shall issue the appropriate order on behalf of the Secretary of Defense. That order shall designate the command relationships for the deploying forces.

(e) *Use of information collected during DoD operations.*

(1) *Acquisition and dissemination.* DoD Components are encouraged to provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of State or Federal law within the jurisdiction of such officials, except as described in paragraph (a)(6)(vii)(B) of this section. The DoD Components shall prescribe procedures for releasing information upon reasonable belief that there has been such a violation.

(i) The assistance provided shall be in accordance with DoD 5400.11–R,[22] ''Department of Defense Privacy Program,'' and with 10 U.S.C. 371 and other applicable laws.

(ii) The acquisition and dissemination of information under paragraph (e) of this section shall be in accordance with DoD Directive 5200.27,[23] ''Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense,'' DoD Directive

[20] Available at *http://www.dtic.mil/whs/directives/corres/pdf/516068p.pdf.*

[21] Available at *http://www.dtic.mil/whs/directives/corres/pdf/605517p.pdf.*

[22] Available at *http://www.dtic.mil/whs/directives/corres/pdf/540011r.pdf.*

[23] Available at *http://www.dtic.mil/whs/directives/corres/pdf/520027p.pdf.*

5240.01,[24] ''DoD Intelligence Activities,'' and, for DoD intelligence components, DoD 5240.1–R,[25] ''Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons.''

(iii) The DoD Components shall establish procedures for ''routine use'' disclosures of such information in accordance with DoD Instruction 5160.68,[26] ''Single Manager for Conventional Ammunition (SMCA): Responsibilities of the SMCA, the Military Services, and the United States Special Operations Command (USSOCOM),'' and DoD Directive 5400.11,[27] ''DoD Privacy Program.''

(iv) Under guidance established by the DoD Components concerned, the planning and execution of compatible DoD training and operations shall, to the maximum extent practicable, take into account the needs of civilian law enforcement officials for information when the collection of the information is an incidental aspect of training or operations performed by Federal military forces consistent with 10 U.S.C. 371.

(v) The needs of civilian law enforcement officials shall, to the maximum extent practicable, be considered when scheduling routine training missions, consistent with 10 U.S.C. 371. This does not permit the planning or creation of missions or training for the primary purpose of aiding civilian law enforcement officials, and it does not permit conducting training or missions for the purpose of routinely collecting information about U.S. citizens.

(vi) Civilian law enforcement agents may accompany routinely scheduled training flights as observers for the purpose of collecting law enforcement information. This provision does not authorize the use of DoD aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials. Such assistance may be provided only in accordance with DoD 4515.13–R,[28] ''Air Transportation Eligibility.''

(vii) Intelligence information held by the DoD Components and relevant to drug interdiction or other civilian law enforcement matters shall be provided promptly to appropriate civilian law enforcement officials, unless sharing that information is determined by the head of that DoD Component to be inconsistent with national security. Under procedures established by the DoD Components concerned, information concerning illegal drugs that is provided to civilian law enforcement officials under provisions of DoD 5240.1–R shall also be provided to law enforcement officials at the El Paso Intelligence Center.

(viii) Nothing in this section modifies DoD procedures for dissemination of information for foreign intelligence or counterintelligence purposes.

(ix) The DoD Components are encouraged to participate in the Department of Justice law enforcement coordinating committees situated in each Federal judicial district.

(x) The assistance provided under paragraph (e) of this section may not include or permit direct participation by DoD personnel in the interdiction of a vessel, aircraft, or land vehicle, or in a search, seizure, arrest, or other similar activity, unless the member's participation in such activity is otherwise authorized by law in accordance with paragraph (a)(1)(ii) of this section.

(2) *Military readiness.* Information shall not be provided under paragraph (e) of this section if it could adversely affect military preparedness of the United States.

(f) *Use of DoD equipment and facilities.*

(1) *Equipment and facilities.* The DoD Components may make equipment, base facilities, or research facilities available to Federal, State, or local civilian law enforcement officials for law enforcement purposes in accordance with the guidance in paragraph (f) of this section.

(i) The ASD(HD&ASA) shall issue guidance to ensure that the assistance provided under paragraph (f) of this section is in accordance with applicable provisions of law, including:

(A) 10 U.S.C. 372, 377, 2576, and 2667.

(B) 31 U.S.C. 1535 (also known and referred to in this part as ''The Economy Act of 1932, as amended'') and 31 U.S.C. 6501–6508 (also known as ''The Intergovernmental Cooperation Act of 1968, as amended'').

(C) Title 40, U.S.C.

(D) 41 U.S.C. 102–103, 105–115, 151–153, 3101, 3105, 3301, 3303–3305, 3509, 3901, 3905–3906, 4501–4506, 4701, and 6101.

(E) 44 U.S.C. chapters 21, 25, 29, and 31.

(ii) The ASD(HD&ASA) guidance shall also ensure compliance with DoD Instruction 4165.70,[29] ''Real Property Management,'' and DoD Directive 5410.12,[30] ''Economic Adjustment Assistance to Defense-Impacted Communities,'' and other guidance that may be issued by the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense.

(2) *Limitations on the use of personnel.* The DoD Components shall follow the guidance in paragraph (a)(1)(iv) of this section in considering requests for DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment made available according to paragraph (f)(1) of this section.

(3) *Military readiness.* Assistance may not be provided under paragraph (f) of this section if such assistance could adversely affect military preparedness. Each request shall be evaluated using the criteria provided in 32 CFR part 185 for evaluating legality, lethality, risk, cost, appropriateness, and readiness. The implementing documents issued by the DoD Components shall ensure that approval for the disposition of equipment is vested in officials who can assess the effect of such disposition on military preparedness.

(4) *Approval authority.* (i) Requests by civilian law enforcement officials for DoD assistance for the use of DoD equipment and facilities shall be forwarded to the appropriate approval authority under the guidance in this section. All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority. Requests will be forwarded and processed according to the urgency of the situation.

(A) Requests for the use of equipment or facilities outside the United States, other than for arms, ammunition, combat vehicles, vessels, and aircraft, shall be considered in accordance with procedures established by the applicable DoD Component.

(B) Requests from other Federal agencies to purchase equipment (permanent retention) from a DoD Component, that are accompanied by appropriate funding documents, may be submitted directly to the DoD Component concerned.

(C) Requests for training, expert advice, or use of personnel to operate or maintain equipment shall be forwarded in accordance with paragraph (a)(5) of this section.

(D) For loans pursuant to 31 U.S.C. 1535 and 6501–6508, which are limited

[24] Available at *http://www.dtic.mil/whs/directives/corres/pdf/524001p.pdf.*

[25] Available at *http://www.dtic.mil/whs/directives/corres/pdf/524001r.pdf.*

[26] Available at *http://www.dtic.mil/whs/directives/corres/pdf/516068p.pdf.*

[27] Available at *http://www.dtic.mil/whs/directives/corres/pdf/540011p.pdf.*

[28] Available at *http://www.dtic.mil/whs/directives/corres/pdf/451513r.pdf.*

[29] Available at *http://www.dtic.mil/whs/directives/corres/pdf/416570p.pdf.*

[30] Available at *http://www.dtic.mil/whs/directives/corres/pdf/541012p.pdf.*

to agencies of the Federal Government, and for leases pursuant to 10 U.S.C. 2667, which may be made to entities outside the Federal Government, this guidance applies:

(*1*) Requests for arms, ammunition, combat vehicles, vessels, and aircraft shall be submitted to the Secretary of Defense for approval.

(*2*) Requests for loan or lease or other use of equipment or facilities are subject to approval by the heads of the DoD Components, unless approval by a higher official is required by statute or DoD issuance applicable to the particular disposition.

(ii) The Heads of the DoD Components shall issue implementing policy and direction for taking action on requests for loan, lease, or other use of equipment or facilities that are not governed by paragraphs (f)(4)(i)(D)(*1*) and (f)(4)(i)(D)(*2*) of this section. Such implementing policy and direction shall ensure compliance with applicable law and DoD issuances, including requiring specific levels of approval with respect to particular dispositions.

(g) *Funding.*

(1) *General.* Reimbursement is required when equipment or services are provided to agencies outside DoD.

(i) The primary sources of reimbursement requirements are the Economy Act of 1932, as amended, for provision of equipment or services to Federal departments and agencies and 10, U.S.C. 2667. 10 U.S.C. 377 requires reimbursement unless the Secretary of Defense elects to waive reimbursement using the criteria described in paragraph (g)(2)(iii) of this section.

(ii) Other statutes may apply to particular types of assistance or may apply to assistance to specific civilian law enforcement entities. Payment of fair market value under 10 U.S.C. 2667 may only be waived under the provisions of 10 U.S.C. 2667.

(iii) A requirement for reimbursement does not apply when DoD Components provide information, collected during the normal course of military training or operations, to Federal, State, or local civilian law enforcement agencies pursuant to 10 U.S.C. 371.

(2) *Procedural requirements.* (i) Defense support of civilian law enforcement agencies is normally an unprogrammed requirement for DoD. DoD 7000.14–R,[31] ''Department of Defense Financial Management Regulations (FMRs),'' Volumes 1–15, prescribes procedures for financing and reporting costs. DoD Components shall comply with these procedures and shall consider the factors presented in paragraph (g)(2)(iii) of this section to determine or recommend whether financing is to be accomplished on a reimbursable or non-reimbursable basis.

(ii) The Commanders of USNORTHCOM, USPACOM, and USSOCOM shall serve as the financial managers responsible for DoD oversight of all operations executed in their areas of responsibility in accordance with § 182.5(k).

(iii) The Secretary of Defense may waive reimbursement for DoD support to civilian law enforcement agencies provided pursuant to 10 U.S.C. 18, or support provided by NG personnel performing duty pursuant to 32 U.S.C. 502(f), in accordance with 10 U.S.C. 377, if such support:

(A) Is provided in the normal course of DoD training or operations; or

(B) Results in a benefit to the DoD element or the NG personnel providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

(3) *Personnel duty status.* Funding for State active duty of NG personnel is the responsibility of the State involved.

Dated: March 8, 2013.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–07802 Filed 4–11–13; 8:45 am]

BILLING CODE 5001–06–P

[31] Available at *http://comptroller.defense.gov/fmr/.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0041]

RIN 1625–AA09

Drawbridge Operation Regulation; Green River, Small-house, KY and Black River, Jonesboro, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the drawbridges across Green River, mile 79.6, Small-house, KY and Black River, mile 41.0, Jonesboro, LA. The Green River bridge was removed in 2008 and the Black River bridge was replaced with a fixed bridge in 2008 and the operating regulations are no longer applicable or necessary.

DATES: This rule is effective April 12, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0041]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Eric Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the CSX Transportation Railroad bridge, that once required draw operations in 33 CFR 117.415(b), was removed from the waterway in 2008 and the US84 bridge, that once required draw operations in 33 CFR 117.427, was removed from the waterway and replaced with a fixed bridge in 2008. Therefore, the regulations are no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. This rule removes the CSX Transportation Railroad bridge draw operation requirements under 33

CFR 117.415(b) and the US84 bridge draw operation requirements under 33 CFR 117.427, thus removing a regulatory restriction on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The CSX Transportation Railroad bridge and US84 bridge have been removed for 5 years and these rules merely require an administrative change to the Code of Federal Regulations, in order to omit a regulatory requirement that is no longer applicable or necessary.

B. Basis and Purpose

The CSX Transportation Railroad bridge across Green River, mile 79.6, was removed in 2008 and the US84 bridge across Black River, mile 41.0 was removed and replaced with a fixed bridge in 2008. It has come to the attention of the Coast Guard that the governing regulations for these drawbridges were never removed subsequent to the removal of the drawbridges. The elimination of these drawbridges necessitates the removal of the drawbridge operation regulations, 33 CFR 117.415(b) and 33 CFR 117.427, that pertain to the former drawbridges.

The purpose of this rule is to remove the section (b) of 33 CFR 117.415 that refers to the CSX Transportation Railroad bridge at mile 79.6 and 33 CFR 117.427 that refers to the US84 bridge at mile 41.0, from the Code of Federal Regulations since it governs bridges that are no longer able to be opened.

C. Discussion of Rule

The Coast Guard is changing the regulations in 33 CFR 117.415(b) and 33 CFR 117.427 by removing restrictions and the regulatory burden related to the draw operations for these bridges that are no longer in existence. The change removes the section (b) of the regulation governing the CSX Transportation Railroad bridge since the bridge has been removed from the waterway and the US84 bridge since the bridge has been replaced with a fixed bridge. This Final Rule seeks to update the Code of Federal Regulations by removing language that governs the operation of the CSX Transportation Railroad bridge, which in fact no longer exists and US84 bridge, which in fact is no longer a drawbridge. This change does not affect waterway or land traffic. This change does not affect nor does it alter the operating schedules in 33 CFR 117.415(a) and (c) that govern the remaining active drawbridges on the Green River.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard does not consider this rule to be ''significant'' under that Order because it is an administrative change and does not affect the way vessels operate on the waterway.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no effect on small entities since these drawbridges have been removed and/or replaced with a fixed bridge and the regulations governing draw operations for these bridges are no longer applicable. There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

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

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves removing 33 CFR 117.415(b) and 33 CFR 117.427 due to removal of drawbridges from the waterway. This rule is categorically excluded, under figure 2–1, paragraph (32) (e), of the Instruction.

Under figure 2–1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

§ 117.415 [Amended]

■ 2. In § 117.415, remove paragraph (b), and redesignate paragraph (c) as paragraph (b).

§ 117.427 [Removed]

■ 3. Remove § 117.427.

Dated: March 28, 2013.

Roy A. Nash,

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

[FR Doc. 2013–08580 Filed 4–11–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0814; FRL– 9799–8]

Approval and Promulgation of Implementation Plans; Region 4 States; Prong 3 Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve submissions from Alabama, Georgia, Mississippi and South Carolina for inclusion into each states' State Implementation Plans (SIP). This action pertains to the Clean Air Act (CAA) requirements regarding prevention of significant deterioration (PSD) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) infrastructure SIPs. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. EPA is taking final action to approve the submissions for Alabama, Georgia, Mississippi and South Carolina that relate to adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. All other applicable infrastructure requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS associated with these States are being addressed in separate rulemakings. EPA is also providing clarification for a footnote that was included in the proposed rulemaking for this action.

DATES: This rule is effective May 13, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0814. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, 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: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 38652), EPA promulgated a new annual $PM_{2.5}$ NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour NAAQS. On December 5, 2012, EPA proposed to approve Alabama, Georgia, Mississippi and South Carolina's

submissions addressing section 110(a)(2) (D)(i)(II) related to PSD. A summary of the background for today's final action is provided below. See EPA's December 5, 2012, proposed rulemaking at 77 FR 72284 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. However, EPA is only addressing element 110(a)(2)(D)(i)(II) related to PSD in this action.

Section 110(a)(2)(D) has two components; 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as ''prongs,'' that generally must be addressed in SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1''), and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4''). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

In previous actions, EPA has already taken action to address Alabama, Georgia, Mississippi and South Carolina's SIP submissions related to sections 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Today's final rulemaking action relates only to requirements related to prong 3 of section 110(a)(2)(D)(i), which as previously described, requires that the SIP contain adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. More information on this requirement and EPA's rationale for today's proposal that each state is meeting this requirement for purposes of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS is provided below.

II. This Action

EPA is taking final action to approve Alabama, Georgia, Mississippi and South Carolina's infrastructure submissions as demonstrating that the States meet the applicable requirements of prong 3 of section 110(a)(2)(D)(i) of the CAA, that relate to adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP.

On December 5, 2012, EPA proposed to approve Alabama, Georgia, Mississippi and South Carolina's July 25, 2008, July 23, 2008, December 7, 2007, and March 14, 2008, (respectively, for the 1997 annual $PM_{2.5}$ NAAQS) and September 23, 2009, October 21, 2009, October 6, 2009, and September 18, 2009, (respectively, for the 2006 24-hour $PM_{2.5}$ NAAQS) infrastructure SIP submissions addressing prong 3 of section 110(a)(2)(D)(i).

Regarding final approval of Georgia and South Carolina's prong 3 of section 110(a)(2)(D)(i), EPA's December 5, 2012 (77 FR 72284), proposed action required EPA to first take final action to approve Georgia's July 26, 2012, and South Carolina's May 1, 2012, SIP revisions regarding $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments) into each State's implementation plan. Final approval of Georgia's July 26, 2012, PSD SIP revision was signed on March 27, 2013, and final approval of South Carolina's May 1, 2012, PSD SIP revision was signed on March 21, 2013.

EPA notes that on September 26, 2012, the Agency approved the Significant Monitoring Concentration (SMC) portion of the $PM_{2.5}$ PSD Increment-SILs-SMC Rule into the SIPs for Alabama and Mississippi. *See* 77 FR 59100 and 77 FR 59095. Since that time, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club* v. *EPA,* 703 F.3d 458 (D.C. Cir. 2013), issued a judgment that, *inter alia,* vacated the provisions adding the $PM_{2.5}$ SMC to the federal regulations, at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), that were promulgated as part of the 2010 $PM_{2.5}$ PSD Increment-SILs-SMC Rule. In its decision, the court held that EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for $PM_{2.5}$ be included in all PSD permit applications. Thus, although the $PM_{2.5}$ SMC was not a required element of a State's PSD program and thus not a structural requirement for purposes of infrastructure SIPs, were a SIP-approved PSD program that contains such a provision to use that provision to issue new permits without requiring ambient $PM_{2.5}$ monitoring data, such application of the SIP would be inconsistent with the court's opinion and the requirements of section 165(e)(2) of the CAA.

Given the clarity of the court's decision, it would now be inappropriate for Mississippi or Alabama to continue to allow applicants for any pending or future PSD permits to rely on the $PM_{2.5}$ SMC in order to avoid compiling ambient monitoring data for $PM_{2.5}$. Because of the vacatur of the EPA regulations, the SMC provisions, included in these States' SIP-approved PSD programs on the basis of EPA's regulations are unlawful and no longer enforceable by law. Permits issued on the basis of these provisions as they appear in approved SIPs would be inconsistent with the CAA and difficult to defend in administrative and judicial challenges. Thus, the SIP provisions may not be applied even prior to their removal from the SIPs. Mississippi and Alabama should instead require applicants requesting a PSD permit, including those having already been applied for but for which the permit has

not yet been received, to submit ambient $PM_{2.5}$ monitoring data in accordance with the CAA requirements whenever either direct $PM_{2.5}$ or any $PM_{2.5}$ precursor is emitted in a significant amount.[1] As the previously-approved $PM_{2.5}$ SMC provisions in the Mississippi and Alabama SIPs are no longer enforceable, EPA does not believe the existence of the provisions in the States' SIPs precludes today's approval of the infrastructure SIP submissions for these States as the submissions relate to prong 3 of the 1997 annual and 2006 24-hour $PM_{2.5}$NAAQS.

EPA intends to initiate a rulemaking to correct SIPs that were approved with regard to the $PM_{2.5}$ SMCs prior to the court's decision. EPA also advises the States to begin preparations to remove the $PM_{2.5}$ provisions from their state PSD regulations and SIPs. However, EPA has not yet set a deadline requiring States to take action to revise their existing PSD programs to address the court's decision.

EPA also notes that on January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA,* No. 08–1250, 2013 WL 45653 (D.C. Cir., filed July 15, 2008) (consolidated with 09–1102, 11–1430), issued a judgment that remanded EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at *8. Subpart 4 of Part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 implementation rule addressed by the court decision, ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' 73 FR 28321 (May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 rule in order to comply with the court's decision. Accordingly, EPA's actions for the Florida infrastructure SIPs as related to element (D)(i)(II) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due 3 years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

Additionally, it should be noted that in the December 5, 2012, proposed rule, on page 72286, in footnote #2, EPA stated that ''[o]n June 11, 2010, the South Carolina Governor signed an Executive Order to confirm that the State had authority to implement appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions at the state level.'' It should have read ''[o]n June 11, 2010, the South Carolina Governor signed a *Joint Resolution* to confirm that the State had authority to implement appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions at the state level.''

EPA received one comment in support of EPA's action and one off-topic comment on its December 5, 2012, proposed rulemaking to approve Alabama, Georgia, Mississippi and South Carolina's SIP submissions as meeting the prong 3 requirements of section 110(a)(2)(D)(i) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The off-topic Commenter wanted ''to congratulate EPA workers for trying to decrease particles and increase the public's health.'' This comment does not appear to be related to the issues presented in the proposed rulemaking, and instead, appears related to a wholly separate topic—promulgation of the new 2012 $PM_{2.5}$ NAAQS. EPA does not interpret this comment as relevant to the topic of EPA's December 5, 2012, proposed action. Instead, EPA interprets this comment as being off-topic and outside of the scope of today's final rulemaking.

Alabama, Georgia, Mississippi and South Carolina's infrastructure submissions addressed the prong 3 requirements of section 110(a)(2)(D)(i) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Accordingly, EPA has determined that Alabama, Georgia, Mississippi and South Carolina's submissions are consistent with section 110 of the CAA.

III. Final Action

As described above, EPA is approving SIP submissions for Alabama, Georgia, Mississippi and South Carolina to incorporate provisions into the States' implementation plans to address the prong 3 requirements of section 110(a)(2)(D)(i) of the CAA for both the 1997 and 2006 $PM_{2.5}$ NAAQS. Specifically, EPA is proposing to approve the States' prong 3 of section 110(a)(2)(D)(i) submissions because they are consistent with section 110 of the CAA. Today's action is not approving any specific rule, but rather making a determination that Alabama, Georgia, Mississippi and South Carolina's already-approved SIPs meet certain CAA requirements.

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

[1] In lieu of the applicants' need to set out $PM_{2.5}$ monitors to collect ambient data, applicants may submit $PM_{2.5}$ ambient data collected from existing monitoring networks when the permitting authority deems such data to be representative of the air quality in the area of concern for the year preceding receipt of the application. EPA believes that applicants will generally be able to rely on existing representative monitoring data to satisfy the monitoring data requirement.

• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

EPA has determined that this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there are no ''substantial direct effects'' on an Indian Tribe as a result of this action. EPA notes that the Catawba Indian Nation Reservation is located within South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' Thus, while the South Carolina SIP applies to the Catawba Reservation, because today's action is not a substantive revision to the South Carolina SIP, and is instead proposing that the existing SIP will satisfy the prong 3 requirements of section 110(a)(2)(D)(i), EPA has determined that today's action will have no ''substantial direct effects'' on the Catawba Indian Nation. EPA has also determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 28, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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 B—Alabama

■ 2. In § 52.50, paragraph (e) is amended by adding two new entries for ''110(a)(1) and (2) Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards'' and ''110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.50 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED ALABAMA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA Approval date	Explanation
* *	* *	*	* *	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Alabama	7/25/2008	4/12/2013 [Insert citation of publication].	Addressing element 110(a)(2)(D)(i)(II) prong 3 only
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	Alabama	9/23/2009	4/12/2013 [Insert citation of publication].	Addressing element 110(a)(2)(D)(i)(II) prong 3 only

Subpart L—Georgia

■ 3. In § 52.570, paragraph (e) is amended by adding two new entries for ''110(a)(1) and (2) Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards'' and ''110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA Approval date	Explanation
* *	* *	*	* *	*
42. 110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Georgia	7/23/2008	4/12/2013 [Insert citation of publication].	Addressing element 110(a)(2)(D)(i)(II) prong 3 only
43. 110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	Georgia	10/21/2009	4/12/2013 [Insert citation of publication].	Addressing element 110(a)(2)(D)(i)(II) prong 3 only

Subpart Z—Mississippi

■ 4. In § 52.1270, paragraph (e) is amended by adding two new entries for ''110(a)(1) and (2) Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards'' and ''110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	* *	*	* *	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Mississippi	12/7/2007	4/12/2013 [Insert citation of publication].	Addressing element 110(a)(2)(D)(i)(II) prong 3 only
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	Mississippi	10/6/2009	4/12/2013 [Insert citation of publication].	Addressing element 110(a)(2)(D)(i)(II) prong 3 only

Subpart PP—South Carolina

■ 5. In § 52.2120, paragraph (e) is amended by adding three new entries for ''110(a)(1) and (2) Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards'' and ''110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards.'' at the end of the table to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED SOUTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Explanation
* * *	*	* *	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	4/14/2008	4/12/2013 [Insert citation of publication].	Addressing element 110(a)(2)(D)(i)(II) prong 3 only
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	9/18/2009	4/12/2013 [Insert citation of publication].	Addressing element 110(a)(2)(D)(i)(II) prong 3 only

[FR Doc. 2013–08266 Filed 4–11–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2013–0109; A–1–FRL–9800–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Connecticut; 111(d)/129 Revised State Plan for Large and Small Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Clean Air Act 111(d)/129 State Plan revisions for Large and Small Municipal Waste Combustors (MWC) submitted by the Connecticut Department of Energy and Environmental Protection (DEEP) on October 22, 2008. The revised Plan is in response to amended emission guidelines (EGs) and new source performance standards (NSPS) for Large MWCs promulgated on May 10, 2006. Connecticut DEEP's State Plan is for implementing and enforcing provisions at least as protective as the EGs applicable to existing Large and Small MWC units pursuant to 40 CFR part 60, Subparts Cb and BBBB, respectively.

DATES: This direct final rule will be effective June 11, 2013, unless EPA receives adverse comments by May 13, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2013–0109 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: mcdonnell.ida@epa.gov*
3. *Fax:* (617) 918–0653.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2013–0109,'' Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxic, & Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxic, & Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2013–0109. 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 through *www.regulations.gov*, or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact 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 legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxic, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: OEP05–2, Boston, MA, 02109–0287. The telephone number is (617) 918–1287. Mr. Bird can also be reached via electronic mail at *bird.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

I. What is a state plan?
II. Why does EPA need to approve state plans?
III. Why does EPA regulate air emissions from MWCs?
IV. What history does Connecticut DEEP have with MWC State Plans?
V. Why did Connecticut DEEP revise the MWC State Plan?
VI. What revisions have been made to the State Plan?
A. Applicability
B. Emission Limits
C. Testing
D. Monitoring
E. Recordkeeping
F. Compliance
VII. Why is EPA approving Connecticut DEEP's revised State Plan?
VIII. Final Action
IX. Statutory and Executive Order Reviews

I. What is a State Plan?

Section 111(d) of the Clean Air Act (CAA) requires pollutants controlled under new source performance standards (NSPS) also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes emission guidelines (EGs) applicable to the control of the same pollutant for existing (designated) facilities. States with designated facilities must develop a state plan to adopt the EGs into their body of regulations. States must also include in their State Plans other elements, such as legal authority, inventories, and public participation documentation to demonstrate their ability to enforce the State Plans.

II. Why does EPA need to approve state plans?

Under section 129 of the CAA, EGs are not federally enforceable. Section 129(b)(2) of the CAA requires states to submit state plans to EPA for approval. Each state must show that its state plan will carry out and enforce the EGs. State Plans must be at least as protective as the EGs and will become federally enforceable upon EPA's approval. The procedures for adopting and submitting state plans are in 40 CFR part 60, Subpart B.

III. Why does EPA regulate air emissions from MWCs?

When burned, municipal solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious human health effects, primarily to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

IV. What history does Connecticut DEEP have with MWC state plans?

On May 15, 2000, the Connecticut Department of Energy and Environmental Protection (DEEP), formally known as the Connecticut Department of Environmental Protection, submitted a section 111(d)/129 State Plan for implementing and enforcing EGs and NSPS for existing and new Large Municipal Waste Combustors (MWCs) pursuant to 40 CFR part 60, subpart Cb and Eb, respectively. While Subpart Cb and Eb applies only to Large MWCs capable of combusting greater than 250 tons of municipal solid waste (MSW) per day, Connecticut DEEP's State Plan and the Plan's enforceable mechanism, the Regulations of Connecticut State Agencies section 22a–174–38 (Section 38), applies to all MWC units within the State of Connecticut, regardless of combusting capacity. EPA approved this plan on April 21, 2000 (65 FR 21354).

Connecticut DEEP made four revisions to the Plan since it was originally approved. The first revision was submitted on November 28, 2000, and the second was submitted on October 15, 2001. These revisions involved changes to Section 38, including revisions to nitrogen oxides (NO_X) limits and related regulatory provisions in the State's ozone SIP to further reduce NO_X emissions from MWCs. Changes made in the first and second revisions were approved by EPA on December 6, 2001 (66 FR 63311).

On September 16, 2004, Connecticut DEEP submitted its third revision to the Plan. The third revision was in response to EPA's December 6, 2000 promulgation of NSPS and EGs for new and existing Small MWCs (40 CFR part 60, subpart AAAA and BBBB, respectively). Small MWCs are defined as MWCs capable of combusting between 35 and 250 tons of MSW per day. Certain monitoring, recordkeeping, and administrative requirements were added to Section 38 pursuant to the requirements of Subpart AAAA and BBBB. EPA approved this revised Plan on February 25, 2005 (70 FR 9226).

V. Why did Connecticut DEEP revise the MWC state plan?

Section 129(a)(5) of the CAA requires EPA to conduct a 5-year review of NSPS and EGs for solid waste incinerators and amend standards and requirements as appropriate. Accordingly, EPA promulgated amended standards and requirements for Large MWCs on May 10, 2006 (71 FR 27324). This rulemaking included revised limits for dioxin/furan (only for units equipped with electrostatic precipitators), mercury, cadmium, lead, particulate matter, and nitrogen oxides (for some types of units). It also contained revisions to the compliance testing provisions to require increased data availability from continuous emissions monitoring systems (CEMS). CEMS are required to generate at least ninety-five percent (95%) data availability on a calendar year basis and at least ninety percent (90%) data availability on a calendar quarter basis. The compliance testing provisions have also been revised to allow the optional use of CEMS to monitor particulate matter and mercury. Other revisions include:

- Operator stand-in provisions to clarify how long a shift supervisor is allowed to be off site when a provisionally certified control room operator is standing in;
- An eight-hour block average for measuring activated carbon injection rate;
- A provision for waiver of operating parameter limits during the mercury performance test and for two weeks preceding the test, as is already allowed for dioxin testing;
- A revision to relative accuracy criterion for sulfur dioxide and carbon monoxide CEMS;
- Flexibility to the annual compliance testing schedule so that a facility tests once per calendar year, but no less than nine months and no more than 15 months since the previous test;
- Allowing use of parametric monitoring limits from an exceptionally well-operated MWC unit to be applied to all identical units at the same plant site without retesting for dioxin;
- The option of monitoring the activated carbon injection pressure or equivalent parameter; and
- Clarifying the exclusion of monitoring data from compliance calculations.

In response, Connecticut DEEP revised Section 38 a fourth time and submitted the revised State Plan to EPA on October 22, 2008. The submittal only addresses those portions of the State Plan that have been updated since EPA's April 21, 2000, December 6, 2001, and February 25, 2005 approvals. EPA is taking action on the October 22, 2008 State Plan revision in today's **Federal Register**.

VI. What revisions have been made to the state plan?

In previous versions of Connecticut DEEP's State Plan for Large and Small MWCs, the Plan and its enforceable mechanism applied to existing and new source MWCs. Connecticut DEEP included the two sets of requirements cognizant that a state plan only requires a state to develop an enforceable mechanism for existing sources. NSPS are independently applicable and federally enforceable, and therefore

requirements for new units subject to the NSPS are not required in a state plan. The revised State Plan submitted to EPA on October 22, 2008 eliminates requirements for new MWCs within the State of Connecticut. The title of the Plan is changed accordingly, eliminating reference to NSPS.

Connecticut DEEP made several revisions to the enforceable mechanism (Section 38) of the State Plan. Revisions serve the primary purpose of amending the regulation in accordance with EPA's 2006 5-year amendments to Large MWC EGs (71 FR 27324). Connecticut DEEP has also made revisions outside the scope of EPA's 2006 revised MWC rule. The following subsections summarize the changes made to Section 38.

A. Applicability

Requirements for new MWCs are eliminated from Section 38 because NSPS requirements are independently applicable and federally enforceable, and therefore redundant in a state regulation. Applicability requirements and a definition concerning co-fired combustors are eliminated from Section 38 because no existing co-fired combustors operate within Connecticut DEEP's jurisdiction. Revised NO_X emission limits in Section 38 are more stringent than NO_X limits in RCSA section 22a–174–22, a state regulation to control NO_X emissions. Connecticut DEEP is eliminating units subject to Section 38 from the applicability of RCSA section 22a–174–22 because of the more stringent NO_X emission limits in Section 38.

B. Emission Limits

The emission limits for particulate matter, cadmium, and lead are reduced consistent with EPA's May 2006 EGs for Large MWCs. Emission limits for NO_X and mercury were reduced beyond the limits set in EPA's May 2006 EGs for Large MWCs. The more stringent NO_X and mercury limits are also being submitted for approval in the revised State Plan.

C. Testing

Section 38's annual performance test schedule is revised consistent with EPA's May 2006 EGs for Large MWCs to allow annual performance tests to occur no less than nine and no more than 15 months following the previous performance test. Initial performance test requirements are removed from Section 38 because they are not applicable to existing MWCs.

D. Monitoring

Relative accuracy criteria are added for sulfur dioxide and carbon monoxide, and operational indicator requirements are added to carbon injection systems used to control dioxin/furan or mercury. Revisions to monitoring requirements are consistent with EPA's May 2006 EGs for Large MWCs.

E. Recordkeeping

New provisions (subdivision (12) and (13) of subsection (k)) are added to Section 38 requiring more stringent recordkeeping requirements for MWC owners. These new requirements are beyond the scope of EPA's Large and Small MWC recordkeeping requirements, and Connecticut DEEP did not submit these provisions for approval into the Plan.

F. Compliance

Outdated compliance schedules are eliminated from Section 38.

VII. Why is EPA approving Connecticut DEEP's revised State plan?

EPA has evaluated the MWC State Plan submitted by Connecticut DEEP for consistency with the Act, EPA guidelines and policy. EPA has determined that Connecticut DEEP's State Plan meets all requirements and, therefore, EPA is approving Connecticut DEEP's Plan to implement and enforce the EGs, as it applies to existing Large and Small MWCs.

EPA's approval of Connecticut's State Plan is based on our findings that:

(1) Connecticut DEEP provided adequate public notice of public hearings for the proposed rule-making that allows Connecticut to carry out and enforce provisions that are at least as protective as the EGs for Large and Small MWCs, and

(2) Connecticut DEEP demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

VIII. Final Action

EPA is approving Connecticut DEEP's revised State Plan for existing Large and Small MWCs. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective June 11, 2013 without further notice unless the Agency receives relevant adverse comments by May 13, 2013.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 11, 2013 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IX. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a State Plan submittal that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 application of those requirements would be inconsistent with the Clean Air Act; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: March 27, 2013.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Title 40 Part 62 of the Code of Federal Regulations is amended as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart H—Connecticut

■ 2. Section 62.1500 is amended by adding paragraph (b)(4) to read as follows:

§ 62.1500 Identification of Plan.

* * * * *

(b) * * *

(4) Revised State Plan for Large and Small Municipal Waste Combustors was submitted on October 22, 2008. Revisions included amendments to Regulations of Connecticut State Agencies section 22a-174–38 (Section 38) in response to amended emission guidelines for Large MWCs (40 CFR part 60, subpart Cb) published on May 10, 2006 (71 FR 27324). Certain new provisions of Section 38 (subdivision (12) and (13) of subsection (k)) were revised in the state regulation, but not submitted for approval in the State Plan.

* * * * *

[FR Doc. 2013–08648 Filed 4–11–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–72; RM–11694, DA 13–448]

Television Broadcasting Services; Ely, NV to Middletown Township, NJ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has been notified by PMCM TV, LLC (''PMCM''), the licensee of KNVN(TV), channel 3, Ely, Nevada, that it wished to the reallocate channel 3 from Ely, Nevada to Middletown, New Jersey, pursuant to section 331(a) of the Communications Act of 1934, as amended. While the Commission denied PMCM's Reallocation Request, PMCM appealed the decision to the United States Court of Appeals for the District of Columbia, which subsequently reversed the Commission's denial and remanded the Commission to approve PMCM's Reallocation Request. Therefore, channel 2 is allocated at Middletown, New Jersey as requested, as it complies with the principle community coverage and technical requirements set forth in the Commission's rules.

DATES: This rule is effective April 12, 2013.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 13–72, adopted March 15, 2013, and released March 18, 2013. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcpiweb.com*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Final rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments is amended by adding channel 3 to Middletown Township, New Jersey and removing channel 3 at Ely, Nevada.

[FR Doc. 2013–08526 Filed 4–11–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 235, and 237

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: *Effective Date:* April 12, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6088; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

1. Revises 215.406–3 to call attention to procedures in the PGI for uploading business clearance documentation in the Contract Business Analysis Repository (CBAR).

2. Corrects typographical error at 235.070–2.

3. Adds 237.102–79 to call attention to guidance at PGI 237.102–79 on private sector notifications in support of in-sourcing actions.

List of Subjects in 48 CFR Parts 215, 235, and 237

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 215, 235, and 237 are amended as follows:

■ 1. The authority citation for 48 CFR parts 215 and 237 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Section 215.406–3 is revised to read as follows:

215.406–3 Documenting the negotiation.

Follow the procedures at PGI 215.406–3 for documenting the negotiation and uploading sole source business clearance documentation into the Contract Business Analysis Repository.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

■ 3. The authority citation for 48 CFR part 235 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

235.070–2 [Amended]

■ 4. Section 235.070–2 is amended by removing the words ''FAR Subpart 50.4'' and adding the words ''FAR 50.104–3'' in their place.

PART 237—SERVICE CONTRACTING

Subpart 237.1 [Amended]

■ 5. Subpart 237.1 is amended by adding section 237.102–79 to read as follows:

237.102–79 Private sector notification requirements in support of in-sourcing actions.

Contracting officers shall follow the procedures at PGI 237.102–79 for notifying affected incumbent contractors of Government in-sourcing actions, in accordance with 10 U.S.C. 2463.

[FR Doc. 2013–08686 Filed 4–11–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2011–0185]

RIN 2127–AL25

Federal Motor Vehicle Safety Standards; Matters Incorporated by Reference

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

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

SUMMARY: On January 6, 2012, NHTSA published a final rule updating and consolidating all of the references to the many standards and practices that are incorporated by reference into the Federal motor vehicle safety standards (FMVSSs). Additionally, the final rule removed an obsolete FMVSS, No. 208a, as well as various obsolete provisions in other FMVSSs.

The agency received a petition for reconsideration of that final rule from the Alliance of Automobile Manufacturers. The petitioner asserts that the amendments to one FMVSS are not based on the latest version of that FMVSS and further asserts that several references to standards are out of date or contain minor omissions. The petitioner requests that technical amendments be made to address these issues.

In response to the petition, this document amends certain paragraphs in FMVSS No. 202a to reflect the substantive language of the FMVSS in effect before the effective date of the January 6, 2012 final rule, with the addition of the cross-references to the

consolidated list of materials incorporated by reference. The agency is denying the other requests made in the petition. This document also makes technical amendments to correct minor errors in the consolidated list of incorporated material and some of the FMVSS sections that reference this list.

DATES: The effective date of this final rule is May 13, 2013. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 6, 2012.

Petitions for reconsideration must be received by May 28, 2013.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: You may contact William H. Shakely of the NHTSA Office of Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–2992; Facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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III. Corrections to FMVSS Nos. 121 and 209
IV. Rulemaking Analyses and Notices

I. Background

On January 6, 2012, NHTSA published a final rule updating and consolidating all of the references to the many standards and practices that are incorporated by reference into the Federal motor vehicle safety standards (FMVSSs) in 49 CFR Part 571 (Part 571).[1] Although this part already contained a section regarding publications incorporated by reference, the list in that section was incomplete and had not been updated regularly. Instead, in many cases, materials had been incorporated piecemeal into individual FMVSSs throughout Part 571. The January 6, 2012 final rule moved those scattered references into the centralized list so that it contains all of the references for the entire Part 571.

Additionally, the final rule removed one obsolete FMVSS, No. 208a, as well as various obsolete provisions in other FMVSSs. Those provisions were applicable to vehicles and equipment manufactured before dates that had already passed and were no longer needed in the Code of Federal Regulations (CFR).

II. Petition for Reconsideration and Agency's Response

The agency received a petition for reconsideration from the Alliance of Automobile Manufacturers (Alliance) on February 21, 2012.[2] The petition asserts that the amendments to one FMVSS were not based on the latest version of a standard incorporated by reference. The petition further asserts that several references to standards are out of date or contain minor omissions. The petition requests that amendments to the regulatory text be made to address these issues.

As described below in the Rulemaking Analyses and Notices section, Executive Order 13563, ''Improving Regulation and Regulatory Review,'' requires agencies to review existing rules to determine if they are outmoded, ineffective, insufficient, or excessively burdensome. Pursuant to this Executive Order, the agency conducted a detailed review of the January 6, 2012 final rule, including the provisions identified by the Alliance's petition, and identified several technical errors that this document corrects.

A. Amendments to FMVSS No. 202a

The Alliance petition states that FMVSS No. 202a, *Head Restraints,*[3] was amended in a final rule published on November 2, 2010.[4] However, the petition asserts that the amendments to FMVSS No. 202a in the January 6, 2012 final rule regarding incorporation by reference appear to be based on the regulatory text in effect before the effective date of the November 2, 2010 final rule. The Alliance requests that FMVSS No. 202a be amended to reflect the amendments made in the November 2, 2010 final rule.

Agency Response—The agency is granting the Alliance's request. The amendments made by the January 6, 2012 final rule inadvertently relied on out-of-date regulatory text for FMVSS No. 202a. This document amends the relevant paragraphs to reflect the amendments made to the standard by the November 2, 2010 final rule.

B. Reference to ASTM E274–65T in FMVSS Nos. 208 and 301

The Alliance petition states that both FMVSS No. 208, *Occupant Crash Protection,* and FMVSS No. 301, *Fuel System Integrity,* reference ASTM E274–65T, ''Tentative Method of Test for Skid Resistance of Pavements Using a Two-Wheel Trailer.'' The Alliance asserts that ASTM E274–65T was a ''tentative'' test protocol at one time and has since been superseded, with the current version being ASTM E274/E274M–11, ''Standard Test Method for Skid Resistance of Paved Surfaces Using a Full-Scale Tire.'' The Alliance requests that NHTSA update the appropriate references in FMVSS Nos. 208 and 301 (including the laboratory test procedures) and 49 CFR 571.5 to reference the current version of the standard.

Agency Response—NHTSA is denying the Alliance's request to update the version of ASTM E274 referenced in FMVSS Nos. 208 and 301. The January 6, 2012 final rule made technical amendments that did not substantively alter or remove from Part 571 any of the existing incorporations by reference in that Part, except for those publications only referenced in the obsolete requirements that were removed from the CFR. For this reason, the agency determined that it was not necessary to provide an opportunity for public comment. However, we believe that the incorporation by reference of a different version of standard, like ASTM E274–11/E274M–11, is beyond the scope of this rulemaking and would likely require an opportunity for public comment. Accordingly, we are denying the Alliance's request.

The agency further notes that the only rationale offered by the Alliance for incorporating a different version of ASTM E274 into FMVSS Nos. 208 and 301 is the fact that the recommended version is the current version of the standard. The Alliance provided neither comparative information regarding the different versions of the standard nor information on how incorporation of the current version would affect (or not affect) the requirements of FMVSS Nos. 208 and 301.

Reviewing the Alliance's request and the relevant sections of Part 571, the agency notes that FMVSS No. 301 was not listed as one of the sections incorporating ASTM E274–65T by reference in the consolidated list of material incorporated by reference nor was a cross-reference to the consolidated list included in FMVSS

[1] 77 FR 751 (Jan. 6, 2012); Docket No. NHTSA–2011–0185–0001.

[2] Alliance Petition for Reconsideration, Docket No. NHTSA–2011–0185–0002.

[3] There are currently two FMVSSs for head restraints: FMVSS No. 202, which applies to vehicles manufactured before September 1, 2009, and FMVSS No. 202a, which applies to vehicles manufactured on or after September 1, 2009.

[4] 75 FR 67233 (Nov. 2, 2010). The effective date of this final rule was January 3, 2011.

No. 301. This notice amends the relevant sections to reflect this incorporation by reference.

C. Clarifying Correction to 1985 Annual Book of ASTM Standards Citation

The Alliance petition states that clarification should be provided for several references to the 1985 Annual Book of ASTM Standards, Vol. 05.04, ''Test Methods for Rating Motor, Diesel, Aviation Fuels, A2. Reference Materials and Blending Accessories, (''ASTM Motor Fuels section''),'' A2.3.2, A2.3.3, and A2.7. Specifically, the Alliance requests that the citation in the consolidated list of material incorporated by reference be amended to read as follows (the underlined text indicates text suggested by the Alliance), *Section I of the* 1985 Annual Book of ASTM Standards, Vol. 05.04, ''Test Methods for Rating Motor, Diesel, Aviation Fuels, A2. Reference Materials and Blending Accessories, (''ASTM Motor Fuels section''),'' A2.3.2, A2.3.3, and A2.7 *of Annex 2.* The Alliance further requests that the citation in paragraph S5.1.1.1(d) of FMVSS No. 205(a) be amended to include the following underlined text ''A2.7 in the ASTM Motor Fuels section *Annex 2* * * *.''

Agency Response—The agency is denying the Alliance's request to amend these citations. The regulations regarding incorporation by reference require that the language incorporating a publication by reference must be as precise as possible.[5] Prior to the January 6, 2012 final rule, the material was cited as located in ''Annex 2'' of ''Motor Fuels, Section 1'' of the 1985 Annual Book of ASTM standards. However, after examining the agency's copy of the standard, the reference was slightly edited in the final rule to reflect precisely the title of the relevant material and its location.

We note that although the portion of Volume 05.04 referenced may be known as Annex 2 of ''Motor Fuels, Section 1''or listed as Annex 2 elsewhere, the precise title of that portion is ''A2. Reference Materials and Blending Accessories.'' The citation clarifies that A2 is associated with the Motor Fuels section of the volume so as not to confuse it with the annexes to other sections (e.g., aviation fuel). The Alliance petition did not provide any additional information as to why the requested amendments were necessary to identify the material incorporated by reference nor did the petition identify any error or potential confusion associated with the amended citation. Based on the foregoing, the agency is denying this request.

[5] 1 CFR 51.9.

III. Corrections to FMVSS Nos. 121 and 209

This document adds a cross-reference to Section 571.5 in FMVSS No. 121, *Air Brake Systems,* and makes minor corrections to the citation format of two ASTM standards incorporated by reference. This document also deletes an extra period in FMVSS No. 209, *Seat Belt Assemblies.*

IV. Rulemaking Analyses and Notices

We have considered the impact of this rulemaking action under Executive Order 12866, ''Regulatory Planning and Review,'' Executive Order 13563, ''Improving Regulation and Regulatory Review,'' and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under those two Executive Orders. This rule makes several minor changes to the regulatory text of FMVSS Nos. 121, 202a, 209, and 301, as well as to the consolidated list of materials incorporated by reference in 49 CFR 571.5. This rule does not increase the regulatory burden on manufacturers. It has been determined to be not ''significant'' under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures.

Executive Order 13563 also requires agencies to review existing rules to determine if they are outmoded, ineffective, insufficient, or excessively burdensome. Pursuant to this Executive Order, the agency conducted a detailed review of the final rule, including the provisions identified by the Alliance's petition, and identified several additional technical errors that this document corrects.

The agency has discussed the relevant requirements of the Vehicle Safety Act, the National Environmental Policy Act, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act, the Paperwork Reduction Act, Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks), the National Technology Transfer and Advancement Act, and Executive Order 13211(Energy Effects), as applicable, in the underlying substantive rules establishing and amending the various sections of Part 571. Those discussions are not affected by these amendments.

Effective Date

We are making the amendments effective 30 days after publication of this document. Section 30111(d) of title 49, United States Code, provides that a FMVSS may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed except when a different effective date is, for good cause shown, in the public interest. These amendments do not impose new requirements on manufacturers, but instead make amendments to the regulatory text of several FMVSSs and the list of materials incorporated by reference to correct minor errors. Therefore, good cause exists for these amendments to be made effective before the 180th day after issuance of this final rule.

Regulatory 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.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

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 49 CFR 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 § 571.5 by revising paragraph (d)(28) to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(d) * * *

(28) ASTM E274–65T, ''Tentative Method of Test for Skid Resistance of Pavements Using a Two-Wheel Trailer,'' issued 1965, into §§ 571.208; 571.301.

* * * * *

■ 3. Amend § 571.121 by revising paragraph S5.3.6.1 to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.3.6.1 Using a full-treadle brake application for the duration of the stop, stop the vehicle from 30 mph or 75 percent of the maximum drive-through speed, whichever is less, on a 500-foot radius curved roadway with a wet level surface having a peak friction coefficient of 0.5 when measured on a straight or curved section of the curved roadway using an ASTM E1136–93 (Reapproved 2003) (incorporated by reference, see § 571.5) standard reference tire, in accordance with ASTM E1337–90 (Reapproved 2008) (incorporated by reference, see § 571.5), at a speed of 40 mph, with water delivery.

* * * * *

■ 4. Amend § 571.202a by revising paragraph S5 and paragraph S5.3.4 to read as follows:

§ 571.202a Standard No. 202a; Head restraints; Mandatory applicability begins on September 1, 2009.

* * * * *

S5 *Procedures.* Demonstrate compliance with S4.2 through S4.4 of this section as follows. The positions of seat adjustment specified in S5 and S5.1 are conditions to be met concurrently and are not a sequential list of adjustments. Any adjustable lumbar support is adjusted to its most posterior nominal design position. If the seat cushion adjusts independently of the seat back, position the seat cushion such that the highest H-point position is achieved with respect to the seat back, as measured by SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin, with leg length specified in S10.4.2.1 of § 571.208 of this Part. If the specified position of the H-point can be achieved with a range of seat cushion inclination angles, adjust the seat inclination such that the most forward part of the seat cushion is at its lowest position with respect to the most rearward part. All tests specified by this standard are conducted with the ambient temperature between 18 degrees C. and 28 degrees C.

* * * * *

S5.3.4 *Seat Adjustment.* The following seat adjustments specify conditions to be met concurrently and are not a sequential list of adjustments. At each outboard designated seating position, using any control that primarily moves the entire seat vertically, place the seat in the lowest position. Using any control that primarily moves the entire seat in the fore and aft directions, place the seat midway between the forwardmost and rearmost position. If an adjustment position does not exist midway between the forwardmost and rearmost positions, the closest adjustment position to the rear of the midpoint is used. Adjust the seat cushion and seat back as required by S5 of this section. If the seat back is adjustable, it is set at an inclination position closest to 25 degrees from the vertical, as measured by SAE Standard J826 JUL95 (incorporated by reference, see § 571.5) manikin. If there is more than one inclination position closest to 25 degrees from the vertical, set the seat back inclination to the position closest to and rearward of 25 degrees. If the head restraint is adjustable, adjust the top of the head restraint to a position midway between the lowest position of adjustment and the highest position of adjustment. If an adjustment position midway between the lowest and the highest position does not exist, adjust the head restraint to a position below and nearest to midway between the lowest position of adjustment and the highest position of adjustment.

* * * * *

■ 5. Amend § 571.209 by revising the introductory text of paragraph S5.2(j)(2)(iii) to read as follows:

§ 571.209 Standard No. 209; Seat belt assemblies.

* * * * *

S5.2 * * *

(j) * * *

(2) * * *

(iii) Dynamic tests: Each acceleration pulse shall be recorded using an accelerometer having a full scale range of ±10 g and processed according to the practices set forth in SAE Recommended Practice J211–1 DEC2003 (incorporated by reference, see § 571.5) Channel Frequency Class 60. The webbing shall be positioned at 75 percent extension, and the displacement shall be measured using a displacement transducer. For tests specified in S5.2(j)(2)(iii)(A) and (B), the 0.7 g acceleration pulse shall be within the acceleration-time corridor shown in Figure 8 of this standard.

* * * * *

■ 6. Amend § 571.301 by revising paragraph S7.5.4 to read as follows:

§ 571.301 Standard No. 301; Fuel system integrity.

* * * * *

S7.5.4 The concrete surface upon which the vehicle is tested is level, rigid, and of uniform construction, with a skid number of 75 when measured in accordance with ASTM E274–65T (incorporated by reference, see § 571.5) at 64 km/h, omitting water delivery as specified in paragraph 7.1 of that method.

* * * * *

Issued on: April 4, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–08356 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 78, No. 71
Friday, April 12, 2013

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0303; Directorate Identifier 2012–NM–220–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–400 and –400F series airplanes. This proposed AD was prompted by a report of cracks on airplanes prior to line number 1308 in the forward and aft inner chords of the station (STA) 2598 bulkhead, and the bulkhead upper and lower webs. This proposed AD would require, as applicable, repetitive high frequency eddy current (HFEC) and low frequency eddy current (LFEC) inspections for cracks in the splice fitting, support frame, forward and aft inner chords, floor support, bulkhead upper web on the upper left and right side of the bulkhead, and the bulkhead lower web on the lower left side of the bulkhead and repair if necessary; and repetitive post-repair inspections and repair if necessary. We are proposing this AD to detect and correct cracks in the splice fitting, support frame, floor support, forward and aft inner chords, and the bulkhead upper and lower webs of the body station, which could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by May 28, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0303; Directorate Identifier 2012–NM–220–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received a report of cracks, on airplanes prior to line number 1308, in the forward and aft inner chords of the STA 2598 bulkhead, the bulkhead upper and lower webs near the inner chord to shear deck connection in the STA 2598 bulkhead, the forward and aft inner chords and bulkhead upper web in the upper corners of the cutout for the horizontal stabilizer rear spar, and the aft inner chord and lower bulkhead web in the lower corner of the cutout for the horizontal stabilizer rear spar. On airplanes line numbers 1308 through 1419, although there was a production change to the STA 2598 bulkhead, analysis showed that cracks could still occur in the structure. This condition, if not corrected, could adversely affect the structural integrity of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0303.

FAA's Determination

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

Proposed AD Requirements

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

The phrase ''related investigative actions'' might be used in this proposed

AD. ''Related investigative actions'' are follow-on actions that: (1) Are related to the primary actions, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase ''corrective actions'' might be used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the Proposed AD and the Service Information

Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 11 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	28 work-hours × $85 per hour = $2,380 per inspection cycle.	$0	$2,380 per inspection cycle.	$26,180 per inspection cycle

We estimate the following costs to do any necessary repairs and post-repair inspections that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	13 work-hours × $85 per hour = $1,105	$0	$1,105
Post-repair Inspection	12 work-hours × $85 per hour = $1,020	$0	$1,020

For any repairs that would be necessary based on the results of the post-repair inspection, we have not received definitive data that would enable us to provide cost estimates for that on-condition action.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0303; Directorate Identifier 2012–NM–220–AD.

(a) Comments Due Date

We must receive comments by May 28, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and –400F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of cracks on airplanes prior to line number 1308 in the forward and aft inner chords of the station 2598 bulkhead, and the bulkhead upper and lower webs. We are issuing this AD to detect and correct cracks in the splice fitting, support frame, floor support, forward and aft inner chords, and the bulkhead upper and lower webs of the body station, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) High Frequency Eddy Current (HFEC) and Low Frequency Eddy Current (LFEC) Inspection

At the compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012; except as provided by paragraph (h)(2) of this AD: Do HFEC and LFEC inspections, as applicable, for cracks in the splice fitting, support frame, floor support, forward and aft inner chords, the bulkhead upper web on the upper left and right side of the bulkhead, and the bulkhead lower web on the lower left side of the bulkhead, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012.

(1) If no cracking is found, repeat the applicable inspections specified in paragraph (g) of this AD, thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012.

(2) If any cracking is found, do the actions specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Before further flight, do the applicable repair, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012; except as provided by paragraph (h)(1) of this AD.

(ii) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012, do an HFEC and LFEC inspections for cracks in the unrepaired structure, which includes splice fitting, support frame, aft and forward inner chord, and the bulkhead upper web; and do an HFEC inspection for cracks in the repaired structure, which is the bulkhead upper web; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012.

(A) If no cracking is found, repeat the applicable HFEC and LFEC inspections specified in paragraph (g)(2)(ii) of this AD, thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012.

(B) If any cracking is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Exception to the Service Information

(1) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(2) Where Boeing Alert Service Bulletin 747–53A2815, dated November 8, 2012, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

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

Issued in Renton, Washington, on March 28, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08610 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0971; Airspace Docket No. 12–ASO–31]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airway V–537; GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: This SNPRM amends a notice of proposed rulemaking (NPRM) published on October 15, 2012 which proposed to amend VHF omnidirectional range (VOR) Federal airway V–537 in Georgia. This SNPRM proposes to remove an additional segment of the airway due to navigation aid coverage limitations.

DATES: Comments must be received on or before May 28, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2012–0971 and Airspace Docket No. 12–ASO–31 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2012–0971 and Airspace Docket No. 12–ASO–31) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0971 and Airspace Docket No. 12–ASO–31.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA30337.

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

Background

The FAA proposed to remove a segment of VOR Federal airway V–537 due to the planned decommissioning of the Moultrie, GA, VOR/DME facility (77 FR 62468, October 15, 2012). The public comment period closed on November 29, 2012. No comments were received.

Subsequently, a flight inspection was conducted to validate the operability of the proposed amended portion of V–537. During that flight inspection, a portion of the originally proposed route amendment was found to be unsatisfactory. Specifically, a radial from the Macon, GA, VORTAC that had been planned to form an intersection along the route between the Greenville, FL, VORTAC and the Macon, GA, VORTAC, did not pass the expanded service volume validation. After considering other alternatives, the FAA opted to propose terminating V–537 at the Greenville VORTAC and eliminate the segment between Greenville and Macon.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to further modify the description of V–537 by eliminating the route segments between the Greenville, FL, VORTAC and the Macon, GA, VORTAC. As now proposed V–537 would extend between Palm Beach, FL, and Greenville, FL.

Since this change expands the scope of the originally proposed airway amendment, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

VOR Federal airways are published in paragraph 6010, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as required to preserve the safe and efficient flow of air traffic.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, Dated August 8, 2012 and effective September 15, 2012, is amended as follows:

Paragraph 6010 Domestic VOR Federal Airways

V–537 [Amended]

From Palm Beach, FL; INT Palm Beach 356° and Treasure, FL, 143° radials; Treasure; INT Treasure 318° and Orlando, FL, 140° radials; INT Orlando 140° and Melbourne, FL 298° radials; INT Melbourne 298° and Ocala, FL 145° radials; Ocala; Gators, FL; to Greenville, FL.

Issued in Washington, DC, on April 4, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–08546 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–373]

Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cannabinoids Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of Intent.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily schedule three synthetic cannabinoids into the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The substances are 1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144), 1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR–144; XLR11) and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48). This action is based on a finding by the Deputy Administrator that the placement of these synthetic cannabinoids into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Any final order will be published in the **Federal Register** and may not be issued prior to May 13, 2013. Any final order will impose the administrative, civil, and criminal sanctions and regulatory controls of Schedule I substances under the CSA on the manufacture, distribution, possession, importation, and exportation of these synthetic cannabinoids.

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Executive Assistant, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152, telephone (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Background

Section 201 of the CSA (21 U.S.C. 811) provides the Attorney General with the authority to temporarily place a substance into Schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid imminent hazard to the public safety. 21 U.S.C. 811(h). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling up to one year.

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no exemption or approval in effect under section 505 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355) for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA, who in turn has delegated her authority to the Deputy Administrator of DEA. 28 CFR 0.100, Appendix to Subpart R.

Section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)) requires the Deputy Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into Schedule I of the CSA.[1] The Deputy Administrator has transmitted notice of his intent to place UR–144, XLR11, and AKB48 in Schedule I on a temporary basis to the Assistant Secretary by letter dated February 14, 2013. The Assistant Secretary responded to this notice by letter dated March 14, 2013 (received by DEA on March 21, 2013), and advised that based on review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for UR–144, XLR11, or AKB48. The Assistant Secretary also stated that HHS has no objection to the temporary placement of UR–144, XLR11 or AKB48 into Schedule I of the CSA. DEA has taken into consideration the Assistant Secretary's comments. As UR–144, XLR11, and AKB48 are not currently listed in any schedule under the CSA, and as no exemptions or approvals are in effect for UR–144, XLR11, and AKB48 under Section 505 of the FD&C Act (21 U.S.C. 355), DEA believes that the conditions of 21 U.S.C. 811(h)(1) have been satisfied. Any additional comments submitted by the Assistant Secretary in response to this notification shall also be taken into consideration before a final order is published. 21 U.S.C. 811(h)(4).

To make a finding that placing a substance temporarily into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Deputy Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows: the substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(c)(4)–(6). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling (21 U.S.C. 811(h)(1)) may only be placed in Schedule I. Substances in Schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States (U.S.), and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1). Available data and information for UR–144, XLR11, and AKB48 indicate that these three synthetic cannabinoids have a high potential for abuse, no currently accepted medical use in treatment in the U.S., and a lack of accepted safety for use under medical supervision.

Synthetic Cannabinoids

While synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system, no scientific literature referring to UR–144, XLR11 or AKB48 was available prior to these drugs identification in the illicit market. In addition, no legitimate non-research uses have been identified for these synthetic cannabinoids nor have they been approved by FDA for human consumption. These synthetic cannabinoids, of which 1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144), 1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR–144; XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) are representative, are so-termed for their Δ^9-tetrahydrocannabinol (THC)—like

[1] Because the Secretary of the Department of Health and Human Services (HHS) has delegated to the Assistant Secretary for Health the Department of Health and Human Services the authority to make domestic drug scheduling recommendations, for purposes of this Notice of Intent, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.'' As set forth in a memorandum of understanding entered into by HHS, the Food and Drug Administration (FDA), and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the Controlled Substance Act (CSA), with the concurrence of NIDA. 50 FR 9518.

pharmacological properties. Numerous herbal products have been analyzed, and UR–144, XLR11, and AKB48 have been identified, in varying mixture profiles and amounts, spiked on plant material.

From January 2009 through January 24, 2013, according to the System to Retrieve Information from Drug Evidence (STRIDE) data, there are 1,074 reports involving 137 cases for UR–144, 773 reports involving 134 cases for XLR11, and 66 reports involving 25 cases for AKB48. From March 2010 to January 29, 2013, the National Forensic Laboratory Information System (NFLIS) registered 9,346 reports containing these synthetic cannabinoids (UR–144—4,387 reports; XLR11—4,516 reports; AKB48—443 reports) across 32 states. No instances regarding UR–144, XLR11 or AKB48 were reported in NFLIS prior to March of 2010. Collectively, reports from NFLIS and (STRIDE) [2] (11,259 reports total through January 29, 2013) for UR–144, XLR11 and AKB48 have exceeded the number of reports for the five synthetic cannabinoid substances (JWH–018, JWH–200, JWH–073, CP–47,497 and CP–47,497 C8 homologue [cannabicyclohexanol]) (7,340 total reports through December 31, 2012). JWH–018, JWH–200, JWH–073, CP–47,497 and CP–47,497 C8 homologue were temporarily scheduled on March 1, 2011, and later placed in Schedule I by Section 1152 of Food and Drug Administration Safety and Innovation Act (FDASIA), Pub. L. 112–144, on July 9, 2012. Section 1152 of the FDASIA [3] amended the CSA by placing cannabimimetic agents and 26 specific substances (including 15 synthetic cannabinoids, 2 synthetic cathinones, and 9 phenethylamines of the 2C-series) in Schedule I. UR–144, XLR11, and AKB48 were not included among the 15 specific named synthetic cannabinoids, and do not fall under the definition of cannabimimetic agents, under FDASIA.

Factor 4. History and Current Pattern of Abuse

Synthetic cannabinoids laced on plant material were first reported in the U.S. in December 2008, when a shipment of 'Spice' was seized and analyzed by U.S. Customs and Border Patrol in Dayton, Ohio. Also in December 2008, JWH–018 and cannabicyclohexanol were identified by German forensic laboratories.

Since the initial identification of JWH–018 (December 2008), many additional synthetic cannabinoids with purported psychotropic effects have been found laced on plant material or related products. The popularity of these synthetic cannabinoids and their associated products appears to have increased since January 2010 in the U.S. based on seizure exhibits and media reports. This trend appears to mirror that experienced in Europe since 2008. Synthetic cannabinoids are being encountered in several regions of the U.S. with the substances primarily found as adulterants on plant material products as self-reported on internet discussion boards. Since then, numerous other synthetic cannabinoids including UR–144, XLR11 and AKB48 have been identified as product adulterants.

Data gathered from published studies, supplemented by discussions on Internet discussion Web sites and personal communications with toxicological testing laboratories, demonstrate that products laced with UR–144, XLR11 and/or AKB48 are being abused mainly by smoking for their psychoactive properties. The adulterated products are marketed as 'legal' alternatives to marijuana. This characterization, along with their reputation as potent herbal intoxicants, has increased their popularity. Several synthetic cannabinoids have been shown to display higher potency in vitro when compared to THC. Smoking mixtures of these substances for the purpose of achieving intoxication has been identified as a reason for numerous emergency room visits and calls to poison control centers. Abuse of these synthetic cannabinoids and their products has been characterized with both acute and long term public health and safety issues. In addition, numerous states, local jurisdictions, and the international community have controlled these substances.

Factor 5. Scope, Duration and Significance of Abuse

According to forensic laboratory reports, the first appearance of synthetic cannabinoids in the U.S. occurred in November 2008, when U.S. Customs and Border Protection analyzed ''Spice'' products. NFLIS has reported 9,346 exhibits (March 2010 to January 29, 2013) related to UR–144, XLR11 and AKB48 from various states including Alaska, Alabama, Arkansas, California, Colorado, Florida, Georgia, Iowa, Indiana, Illinois, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Nebraska, Nevada, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin and Wyoming. STRIDE has reported 1,913 records involving UR–144, XLR11 and AKB48 from January 2009 through January 24, 2013. From January 1 through December 31, 2012, the American Association of Poison Control Centers [4] has reported receiving in excess of 5,200 calls relating to products purportedly laced with synthetic cannabinoids. Although the center does not identify specific cannabinoid substances, the data does indicate the magnitude of exposure to synthetic cannabinoids.

Factor 6. What, If Any, Risk There Is to the Public Health

UR–144, XLR11 and AKB48 are pharmacologically similar to Schedule I substances THC and JWH–018, as well as other synthetic cannabinoids. By sharing pharmacological similarities with the Schedule I substances (THC and JWH–018), synthetic cannabinoids pose a risk to the abuser. In addition, the chronic abuse of products laced with synthetic cannabinoids has also been linked to addiction and withdrawal. Law enforcement, military, and public health officials have reported exposure incidents that demonstrate the dangers associated with abuse of synthetic cannabinoids to both the individual abusers and other affected individuals since these substances were never intended for human use. Warnings regarding the dangers associated with abuse of synthetic cannabinoids and their products have been issued by numerous state public health departments and poison control centers and private organizations. In a 2012 report, the Substance Abuse and Mental Health Services Administration [5] reported 11,406 emergency department visits involving a synthetic cannabinoid product during 2010.

Detailed product analyses have detected variations in the amount and type of synthetic cannabinoid laced on plant material even within samplings of

[2] National Forensic Laboratory Information System (NFLIS) is a program sponsored by Drug Enforcement Administration's (DEA) Office of Diversion Control which compiles information on exhibits analyzed in State and local law enforcement laboratories. System to Retrieve Information from Drug Evidence (STRIDE) is a DEA database which compiles information on exhibits analyzed in DEA laboratories.

[3] Subtitle D of Title XI of the Food and Drug Administration Safety and Innovation Act (FDASIA), which includes Sections 1151–1153 of Pub. L. 112–144, is also known as the ''Synthetic Drug Abuse Prevention Act of 2012,'' or ''SDAPA.''

[4] American Association of Poison Control Centers (AAPCC) is a non-profit, national organization that represents the poison centers of the United States.

[5] Substance Abuse and Mental Health Services Administration (SAMHSA) is a branch of the U.S. Department of Health and Human Services (HHS). It is charged with improving the quality and availability of prevention, treatment, and rehabilitative services in order to reduce illness, death, disability, and cost to society resulting from substance abuse and mental illnesses.

the same product. Since abusers obtain these drugs through unknown sources, purity of these drugs is uncertain, thus posing significant adverse health risk to these users. Submissions to DEA laboratories from January 2012 through February 11, 2013, have documented over 142 distinct packaging examples containing a mixture of UR–144, XLR11 and/or AKB48. These unknown factors present a significant risk of danger to the abuser. Some of the adverse health effects reported in response to the abuse of synthetic cannabinoids include vomiting, anxiety, agitation, irritability, seizures, hallucinations, tachycardia, elevated blood pressure, and loss of consciousness. As mentioned above, there are reported instances of emergency department admissions in association with the abuse of these THC-like substances. There are no recognized therapeutic uses of these substances in the U.S.

In February 2013, the Centers for Disease Control and Prevention published a report by Murphy et al. describing unexplained cases of acute kidney injury in 16 patients, all of whom had reported recent smoking of synthetic cannabinoids. Upon further investigation, it was determined that of the 16 patients, 7 of the subjects had smoked substances that were positive for XLR11 or its metabolite. Cases were reported from Wyoming (4 cases), Rhode Island (1 case), New York (2 cases), Oregon (6 cases), Kansas (1 case) and Oklahoma (2 cases).

Finding of Necessity of Schedule I Scheduling To Avoid Imminent Hazard to Public Safety

Based on the above data and information, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of UR–144, XLR11, and AKB48 pose an imminent hazard to the public safety. DEA is not aware of any currently accepted medical uses for these synthetic cannabinoids in the U.S. A substance meeting the statutory requirements for temporary scheduling (21 U.S.C. 811(h)(1)) may only be placed in Schedule I. Substances in Schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the U.S., and a lack of accepted safety for use under medical supervision. Available data and information for UR–144, XLR11, and AKB48 indicate that these three synthetic cannabinoids have a high potential for abuse, no currently accepted medical use in treatment in the U.S., and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)), the Deputy Administrator through a letter dated February 14, 2013, notified the Assistant Secretary of Health of the intention to temporarily place these three synthetic cannabinoids in Schedule I.

Conclusion

This notice of intent initiates expedited temporary scheduling action and provides the 30-day notice pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)). In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)), the Deputy Administrator has considered available data and information and has set forth herein the grounds for his determination that it is necessary to temporarily schedule three synthetic cannabinoids, 1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144), 1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR-144; XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) in Schedule I of the CSA and finds that placement of these synthetic cannabinoids into Schedule I of the CSA is warranted in order to avoid an imminent hazard to the public safety.

Because the Deputy Administrator hereby finds that it is necessary to temporarily place these synthetic cannabinoids into Schedule I to avoid an imminent hazard to the public safety, any subsequent final order temporarily scheduling these substances will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of up to three years pending completion of the permanent or regular scheduling process. It is the intention of the Deputy Administrator to issue such a final order as soon as possible after the expiration of 30 days from the date of publication of this notice. UR–144, XLR11, and AKB48 will then be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, possession, importing and exporting of a Schedule I controlled substance under the CSA.

Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth specific criteria for scheduling a drug or other substance. While temporary scheduling orders are not subject to judicial review (21 U.S.C. 811(h)(6)), the regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions which conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877.

Regulatory Matters

Section 201(h) of the CSA (21 U.S.C. 811(h)) provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of a proposed temporary scheduling order is transmitted to the Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) do not apply to this notice of intent. In the alternative, even assuming that this notice of intent might be deemed to be subject to section 553 of the APA, the Deputy Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency of the temporary scheduling action to avoid an imminent hazard to the public safety.

Although this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Deputy Administrator will be taking into consideration any comments submitted by the Secretary of HHS with regard to the proposed temporary scheduling order. Further, DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where (as here) the agency is not required by section 553 of

the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 ''Regulatory Planning and Review'', section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 ''Federalism'' it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Deputy Administrator of the DEA by Department of Justice regulations (28 CFR 0.100, Appendix to Subpart R), the Deputy Administrator hereby intends to order that 21 CFR Part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Section 1308.11 is amended by adding new paragraphs (h)(9), (10), and (11) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(9) 1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone, its optical, positional, and geometric isomers, salts and salts of isomers—7144 (Other names: UR-144, 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole)

(10) 1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone, its optical, positional, and geometric isomers, salts and salts of isomers—7011 (Other names: 5-fluoro-UR-144, 5-F-UR-144, XLR11, 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole)

(11) *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers—7048 (Other names: APINACA, AKB48)

Dated: April 5, 2013.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2013–08671 Filed 4–11–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

[BY–/AM65P0002.99900/]

Tribal Consultation on the Draft Regulations Governing the Tribal Transportation Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal Consultations and Informational Meetings.

SUMMARY: The Bureau of Indian Affairs is announcing tribal consultations to discuss draft revisions of the regulations governing the Tribal Transportation Program. The consultations will also cover requirements for proposed roads and access roads to be included in the National Tribal Transportation Facility Inventory and will include an update regarding the ongoing quality assurance review of the facility inventory.

DATES: Comments on the draft rule are due by June 14, 2013. The consultation sessions will be held on the following dates, at the following locations:

Meeting date	Location	Time
May 14, 2013	Anchorage, AK	9 a.m.–4:30 p.m.
May 16, 2013	Phoenix, AZ	9 a.m.–4:30 p.m.
May 21, 2013	Minneapolis, MN	9 a.m.–4:30 p.m.

ADDRESSES:

• *Send comments to:* LeRoy M. Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, 1849 C Street, NW., MS–4513, Washington, DC 20240, telephone (202) 513–7711, email: *leroy.gishi@bia.gov*; or Robert W. Sparrow, Jr., Director, Tribal Transportation Program, Federal Highway Administration, 1200 New Jersey Ave, SE., Room E61–311, Washington, DC 20159, telephone (202) 366–9483, email: *robert.sparrow@dot.gov*.

• Addresses of the venues at which each meeting will be held, a copy of the draft regulation, and background information are posted at the following Web site (the address is case-sensitive, please use capitals where indicated): *http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation.*

FOR FURTHER INFORMATION CONTACT: LeRoy M. Gishi, telephone (202) 513–7711; email: *leroy.gishi@bia.gov*; or Robert W. Sparrow, Jr., telephone (202) 366–9483; email: *robert.sparrow@dot.gov*.

SUPPLEMENTARY INFORMATION: Federally recognized tribes are invited to attend one or more of the consultation and informational sessions regarding the following topics:

• On July 6, 2012, Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, a two-year reauthorization of the transportation act, was signed into law by President Obama and became effective on October 1, 2012.

• Section 1119 of MAP–21 struck the existing laws governing the Indian Reservation Roads Program from 23 U.S.C. 201–204, and renumbered many of those sections under 23 U.S.C. 201 and 202 and changed the name from ''Indian Reservation Roads Program'' to ''Tribal Transportation Program (TTP).'' MAP–21 also changed the name of the ''Indian Reservation Roads Inventory'' to the ''National Tribal Transportation Program Facility Inventory (NTTFI).'' *See* 23 U.S.C. 202(b)(1). Section 1103 of MAP–21 amended the name of an ''Indian Reservation Road'' to a ''Tribal Transportation Facility.''

• Section 1119 of MAP–21 created a new formula for distribution of TTP funds among tribes, which had the effect of overriding the existing Relative Need Distribution Formula (RNDF) that was published in 2004 at 25 CFR part 170, Subpart C. *See* 23 U.S.C. 202(b)(3). Although the RNDF is no longer applicable under the new TTP formula, certain historical aspects of the former

RNDF continue to be relevant in the new TTP formula.

• Section 1119 of MAP–21 also made other miscellaneous changes to the remainder of the laws governing the TTP that require BIA to make changes to 25 CFR part 170.

• The current 25 CFR part 170 was published in 2004 (69 **Federal Register** 43090, July 19, 2004). Congress later enacted the Safe, Accountable, Flexible and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), Public Law 100–59 (August 10, 2005). Certain provisions of 25 CFR part 170 were amended as a result of the enactment of SAFETEA–LU but the regulation was not revised at that time. MAP–21 effectively amends or renders obsolete parts of 25 CFR part 170 so the BIA must revise the regulation to bring it into compliance with MAP–21.

• There have been significant changes in the way the TTP is delivered to tribes since 25 CFR part 170 was published in 2004 and the Bureau of Indian Affairs (BIA) needs to update the regulations to reflect certain aspects of the changes.

• Tribes, BIA, and FHWA have identified the lack of requirements for proposed and access roads to be added to or remain in the NTTFI as an area of concern in the current regulation for many years. Proposed roads are currently defined by 25 CFR 170.5 as ''a road which does not currently exist and needs to be constructed.'' A primary access route is the shortest practicable route connecting two points, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal termini, such as airports, harbors, or boat landings. *See* 23 U.S.C. 202(b)(1). During 2012, BIA and FHWA conducted thirteen tribal consultation meetings throughout the country on a joint BIA and FHWA recommendation for changing how Proposed Roads and Access Roads would contribute to the RNDF for Indian Reservation Roads Program funds. *See* 25 CFR part 170, Subpart C. Although MAP–21 replaces the RNDF as discussed above, BIA needs to codify the requirements that Proposed Roads or Access Roads must meet in order to be added to or remain in the NTTFI.

• Apart from the consultations, BIA and FHWA will provide an update regarding the ongoing NTTFI quality assurance review. After consulting with tribes in 2010, BIA and FHWA began the process of implementing a comprehensive quality assurance review of the NTTFI to be compatible with the Federal-aid highways functional classification system. During the review, it was determined that some transportation facilities in the NTTFI were missing data, incorrectly classified data, and contained other technical errors. The update will discuss the status and results to date of the quality assurance review, as well as seek additional input regarding ways to continue improving the accuracy of the NTTFI.

BIA plans to schedule further consultations at different or additional locations after a Notice of Proposed Rulemaking is published in the **Federal Register**.

MEETING AGENDA FOR MAY 14, 16, AND 21, 2013 (ALL TIMES LOCAL)

Time	Topic
9 a.m.–9:15 a.m.	Welcome and Introductions.
9:15 a.m.–9:30 a.m.	Brief history of 25 CFR part 170 and process for updating the regulation.
9:30 a.m.–10 a.m.	MAP–21 and its impacts on 25 CFR part 170.
10 a.m.–10:15 a.m.	Break.
10:15 a.m.–11:45 a.m.	Discussion of updates to 25 CFR part 170.
11:45 a.m.–1 p.m.	Break.
1 p.m.–3 p.m.	Continue discussion of updates to 25 CFR part 170.
3:15 p.m.–4 p.m.	Update regarding National Tribal Transportation Facilities Inventory (NTTFI) quality assurance review.
4 p.m.–4:30 p.m.	Closing Comments.
4:30 p.m.	Adjourn.

Dated: April 9, 2013.

Kevin Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–08665 Filed 4–11–13; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Docket No. USMS 110; AG Order No. 3381–2013]

RIN 1105–AB42

Revision to United States Marshals Service Fees for Services

AGENCY: United States Marshals Service, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to increase the fee from $55 per person per hour to $65 per person per hour for process served or executed personally by a United States Marshals Service employee, agent, or contractor. This proposed fee increase reflects the current costs to the United States Marshals Service for service of process in federal court proceedings.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before June 11, 2013. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. USMS 110'' on all electronic and written correspondence. The Department encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Office of General Counsel, United States Marshals Service, 2604 Jefferson Davis Highway, Alexandria, VA 22301.

FOR FURTHER INFORMATION CONTACT: Joe Lazar, Associate General Counsel, United States Marshals Service, 2604 Jefferson Davis Highway, Alexandria, VA 22301, telephone number (202) 307–9054 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Legal Authority for the United States Marshals Service To Charge Fees

The Attorney General must establish fees to be taxed and collected for certain services rendered by the United States Marshals Service in connection with federal court proceedings. 28 U.S.C. 1921(b). These services include, but are not limited to, serving writs, subpoenas, or summonses, preparing notices or bills of sale, keeping attached property, and certain necessary travel. 28 U.S.C. 1921(a). To the extent practicable, these fees shall reflect the actual and reasonable costs of the services provided. 28 U.S.C. 1921(b).

The Attorney General initially established the fee schedule in 1991 based on the actual costs of services rendered and hours expended at that time, *e.g.,* salaries, overhead. 56 FR 2436–01 (Jan. 23, 1991). Due to an increase in the salaries and benefits of United States Marshals Service personnel over time, the initial fee schedule was amended in 2000, *see* 65 FR 47859–01 (Aug. 4, 2000), and again in 2008, *see* 73 FR 69552–01 (Nov. 19, 2008). The current fee schedule is inadequate and no longer reflects the actual and reasonable costs of the services rendered.

Federal Cost Accounting and Fee Setting Standards and Guidelines Being Used

When developing fees for services, the United States Marshals Service adheres to the principles contained in Office of Management and Budget Circular No. A–25 Revised (''Circular No. A–25''). Circular No. A–25 states that, as a general policy, a ''user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' *Id.* sec. 6.

The United States Marshals Service follows the guidance contained in Circular No. A–25 to the extent that it is not inconsistent with any federal statute. Specific legislative authority to charge fees for services takes precedence over Circular No. A–25 when the statute ''prohibits the assessment of a user charge on a service or addresses an aspect of the user charge (e.g., who pays the charge; how much is the charge; where collections are deposited).'' *Id.* sec. 4(b). When a statute does not address how to calculate fees or what costs to include in fee calculations, Circular No. A–25 instructs that its principles and guidance should be followed ''to the extent permitted by law.'' *Id.* According to Circular No. A–25, federal agencies should charge the full cost or the market price of providing services that provide a special benefit to identifiable recipients. *Id.* sec. 6(a)(2). Circular No. A–25 defines full cost as including ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' These costs may include an ''appropriate share'' of: (a) ''[d]irect and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement''; (b) ''[p]hysical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment''; (c) ''management and supervisory costs''; and (d) ''costs of enforcement, collection, research, establishment of standards, and regulation.'' *Id.* sec. 6(d)(1).

Processes Used To Determine the Amount of the Fee Revision

The Attorney General initially established the fee schedule in 1991 based on the average salaries, benefits, and overhead of the Deputy U.S. Marshals who executed process on behalf of a requesting party. The fee schedule was revised in 2000 and again in 2008. The 2008 rates, which are still being charged, are set forth at 28 CFR 0.114(a) as follows:

- For process forwarded for service from one U.S Marshals Service office or suboffice to another—$8 per item forwarded;
- For process served by mail—$8 per item mailed;
- For process served or executed personally—$55 per hour (or portion thereof) for each item served by one U.S. Marshals Service employee, agent, or contractor, plus travel costs and any other out-of-pocket expenses. For each additional U.S. Marshals Service employee, agent, or contractor who is needed to serve process—$55 per person per hour for each item served, plus travel costs and any other out-of-pocket expenses.
- For copies at the request of any party—$.10 per page;
- For preparing notice of sale, bill of sale, or U.S. Marshal deed—$20 per item;
- For keeping and advertisement of property attached—actual expenses incurred in seizing, maintaining, and disposing of the property.

In 2012, the United States Marshals Service conducted an analysis to determine whether, in light of the increase in salaries and expenses of its workforce over the previous time period, the existing fee schedule continued to reflect the costs of serving process. The following cost module was designed to reflect the average hourly cost of serving process in person on behalf of a requesting party.

COST MODULE

Hourly Wage	$32.97
Law Enforcement Availability Pay	8.24
Fringe Benefits	16.90
Indirect Costs	7.41
Total Personnel Costs	65.52

The ''hourly wage'' in this module reflects the hourly basic rate for law enforcement officers at Grade 12, Step 1, as set forth in the Office of Personnel Management's 2012 Salary Table for the ''rest of the United States'' (available at *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2012/law-enforcement-officer/rus_leo_h.pdf).* The cost of Law Enforcement Availability Pay also was factored into the hourly wage of an average Criminal Investigator (Deputy U.S. Marshal).[1] The fringe benefits rate reflected 41 percent of total wage costs. Finally, the indirect costs, which reflected the costs of administrative services, including management/supervisory compensation and benefits, depreciation, utilities, supplies, and equipment, constituted approximately 18 percent of the total wage costs. As a result of the cost module, the United States Marshals Service determined that the existing fee schedule no longer reflected the actual and reasonable costs of serving process.

The total personnel costs of serving process were rounded to the nearest five-dollar increment. Thus, in order to recover the actual and reasonable costs of serving process, the United States Marshals Service is proposing to charge $65 per hour (or portion thereof) for each item served by one United States Marshals Service law enforcement officer. This represents a less than 20 percent increase ($10 per hour) from the existing fee for serving process established in 2008.

[1] The Law Enforcement Availability Pay Act of 1994, Public Law 103–329, tit. VI, sec. 633, 108 Stat. 2425 (1994) (codified at 5 U.S.C. 5545a), provides that law enforcement officers, such as Criminal Investigators (Deputy U.S. Marshals), who are required to work unscheduled hours in excess of each regular work day, are entitled to premium pay totaling 25 percent of their base salary.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Under the current fee structure, the United States Marshals Service collected approximately $1,245,000 in service-of-process fees in FY2012.[2] The implementation of this proposed fee structure would provide the United States Marshals Service with an estimated additional $235,000 in revenue over the revenue that would be collected under the current fee structure. This revenue increase represents a recovery of costs based on an increase in salaries, expenses, and employee benefits over the previous four-year period.

The economic impact on individual entities that utilize the services of the United States Marshals Service will be minimal. The service of process fees will only affect entities that pursue litigation in federal court and, in most instances, seek to have the U.S. Marshals levy upon or seize property. The service of process fees will be increased by only $10 per hour from the previous rate increase more than four years ago. The fees will be consonant with similar fees already paid by these entities in state court litigation.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866 (''Regulatory Planning and Review''), and with section 1(b) of Executive Order 13563 (''Improving Regulation and Regulatory Review'').

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 concerning civil justice reform.

Paperwork Reduction Act of 1995

This proposed rule does not contain collection of information requirements and would not be subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, Title 28, Part 0, Subpart T of the Code of Federal Regulations is proposed to be amended as follows:

PART 0—[AMENDED]

■ 1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. In § 0.114, amend paragraph (a)(3) by removing the fee ''$55'' and adding in its place the fee ''$65''.

Dated: April 1, 2013.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2013–08158 Filed 4–11–13; 8:45 am]

BILLING CODE 4410–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0181]

RIN 1625–AA08

Special Local Regulations; Marine Events, Breton Bay; St. Mary's County, Leonardtown, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Annual Leonardtown Wharf Boat Races,'' a marine event to be held on the waters of Breton Bay on July 13, 2013, and July 14, 2013. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of Breton Bay during the event.

DATES: Comments and related material must be received by the Coast Guard on or before May 13, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S.

[2] This amount does not include $986,000 in United States Marshals Service commissions collected for sales during FY2012. This proposed rule does not affect commissions, only the fees charged for service of process.

Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. 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.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, 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 at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone 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,* type the docket number [USCG–2013–0181] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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 the rule based on your comments.

2. 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,* type the docket number (USCG–2013–0181) 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.

3. 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).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Annual Leonardtown Wharf Boat Race event.

On July 13, 2013 and July 14, 2013, the Southern Maryland Racing Club of Lexington Park, Maryland, is sponsoring the ''Annual Leonardtown Wharf Boat Race'' at Leonardtown, Maryland. The event will occur from 8:30 a.m. to 4:30 p.m. on both days. Approximately 60 Class A and B hydroplane and runabout racing boats will operate on a one-mile marked oval course located in the upper portion of Breton Bay adjacent to the Leonardtown Wharf. The event is sanctioned by the American Power Boat Association. Participants will be supported by sponsor-provided watercraft. The race course will impede the federal navigation channel.

C. Discussion of Proposed Rule

The Coast Guard proposes to establish special local regulations on specified waters of Breton Bay. The regulations will be enforced from 8 a.m. to 5 p.m. on July 13, 2013, and from 8 a.m. to 5 p.m. on July 14, 2013. The regulated area includes all waters of Breton Bay, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16′45″ N, and bounded to the west by a line drawn along longitude 076°38′30″; W, located at Leonardtown, MD.

The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Vessels intending to transit Breton Bay through the regulated area will only be allowed to safely transit the regulated area only when the Coast Guard Patrol Commander has deemed it safe to do so. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and the official patrol on scene.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

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 Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for a limited period; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the event area, without authorization from the Coast Guard Patrol Commander or official patrol on scene, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Breton Bay encompassed within the special local regulations from 8 a.m. to 5 p.m. on July 13, 2013, and from 8 a.m. to 5 p.m. on July 14, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. 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.

9. 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.

10. Protection of Children From Environmental Health Risks

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.

11. 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.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(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. This proposed rule involves special local regulations issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35–T05–0181 to read as follows:

§ 100.35–T05–0181 Special Local Regulations for Marine Events, Breton Bay; St. Mary's County, Leonardtown, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of Breton Bay, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude-38°16′45″ N, and bounded to the west by a line drawn along longitude 076°38′30″ W, located at Leonardtown, MD. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all persons and vessels participating in the Annual Leonardtown Wharf Boat Race event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) Vessels and persons may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, vessels and persons must pass directly through the regulated area, at a safe speed and without loitering.

(3) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant in the event, at any time it is deemed necessary for the protection of life or property.

(4) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) Enforcement periods: This section will be enforced from 8 a.m. to 5 p.m. on July 13, 2013 and from 8 a.m. to 5 p.m. on July 14, 2013.

Dated: March 21, 2013.

Kevin C. Kiefer,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2013–08581 Filed 4–11–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2013–0192, FRL–9802–1]

Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on a proposed State Implementation Plan revision submitted by the New York State Department of Environmental Conservation. This revision consists of a change to New York's November 15, 1992 Carbon Monoxide Attainment Demonstration that would remove a reference to a limited off-street parking program as it relates to the New York County portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT Carbon Monoxide attainment area. EPA is proposing approval of this State Implementation Plan revision because it will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area.

DATES: Comments must be received on or before May 13, 2013.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2013–0192, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Email: Ruvo.Richard@epa.gov*
- *Fax:* 212–637–3901
- *Mail:* Richard Ruvo, Acting Branch Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Richard Ruvo, Acting Branch Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Instructions: Direct your comments to Docket No. EPA–R02–OAR–2013–0192. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is

not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh (*feingersh.henry@epa.gov*), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing?

The EPA is proposing to approve a revision to the New York State Implementation Plan (SIP) in response to a request submitted by the New York State Department of Environmental Conservation (New York) on April 5, 2007. This revision consists of a change to New York's November 15, 1992 Carbon Monoxide Attainment Demonstration that would remove a reference to a limited off-street parking program as it relates to the New York County portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT Carbon Monoxide attainment area. EPA's proposal is to remove the off-street parking program that was identified by New York as one of the Transportation Control Measures in New York's 1992 SIP submittal. This limited off-street parking program is imposed and enforced by the City of New York. EPA is proposing approval of this SIP revision because it will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area.

II. What is the background information for this proposal?

New York submitted a Carbon Monoxide SIP on November 13, 1992 entitled ''Carbon Monoxide Attainment Demonstration—New York Metropolitan Area'' and EPA published a final approval on July 25, 1996 (61 **Federal Register** (FR) 38594.) These actions became effective on August 26, 1996. On November 23, 1999, New York submitted a request to EPA to redesignate this area from nonattainment to attainment of the National Ambient Air Quality Standards (NAAQS) for Carbon Monoxide. EPA published a final approval of this request on April 19, 2002 (67 FR 19337) and the action became effective on May 20, 2002.

On April 5, 2007, New York submitted a request to revise the SIP to remove a reference to a limited off-street parking program as it relates to New York County. This proposed SIP revision underwent a public hearing and public notice and comment process. In a July 26, 2007 letter to the State, the EPA responded to the April 5, 2007 revision request by asking for the public hearing record including a response to comments received. New York submitted this additional information to EPA in a letter dated October 5, 2012.

The New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT CO attainment area is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. This is collectively referred to as the New York City Metropolitan Area or NYMA.

The NYMA has been meeting the Carbon Monoxide (CO) standard for over twenty years, since 1992, and CO levels have continuously trended downward. As discussed later in Section IV—''What are the Carbon Monoxide Trends,'' current 8-hr CO levels are less than ⅓ of the 8-hr standard while 1-hr CO levels not only achieve the 1-hour standard, they are much less than the 8-hr standard.

III. What was included in New York's proposed SIP submittal?

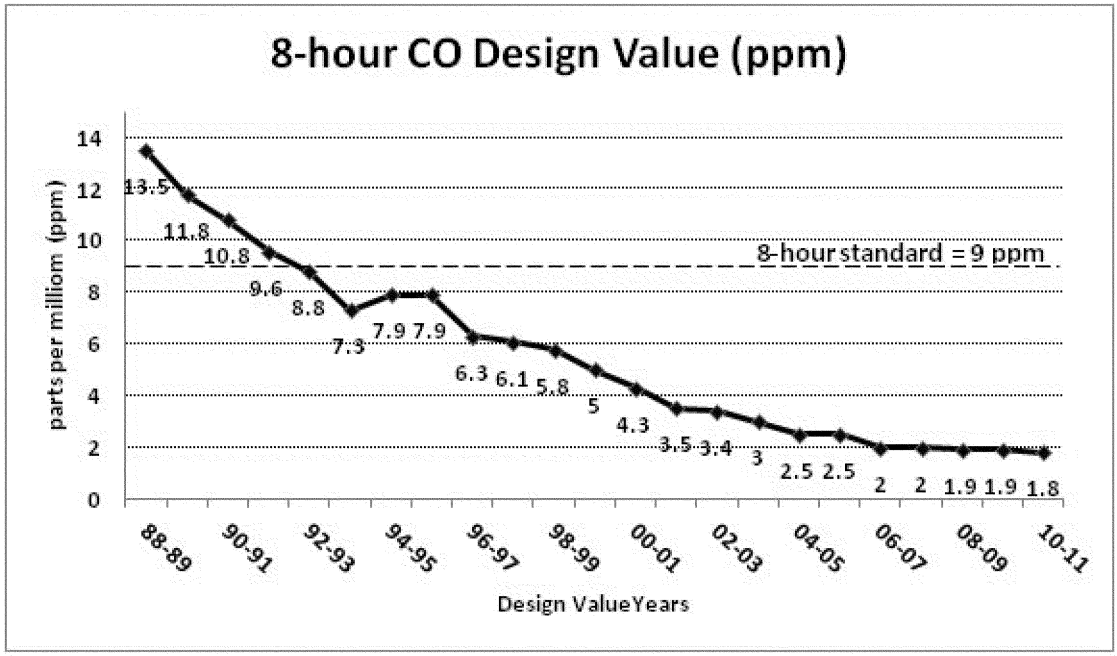
New York submitted to EPA a proposed SIP revision that includes a change to the New York State Carbon Monoxide SIP. The change is a clarification to a commitment identified in New York's November 13, 1992 submittal. New York also submitted air quality monitoring data from 1997 through 2011 along with an ambient monitoring trends analysis for the period 1988 through 2011. This analysis shows a marked downward trend in CO ambient concentrations. These concentrations are, and have been for a number of years now, lower than the background values used in the 1992 CO SIP.

In addition, New York held a public hearing on July 17, 2007 and written comments were accepted until July 24, 2007, which was an extension of the original May 30, 2007 deadline. New York submitted to EPA a summary of the public comments received and responses to those comments.

IV. What are the Carbon Monoxide trends?

There has been a steadily declining Carbon Monoxide trend in the NYMA since the 1980's. The last few years have seen a ''bottoming out'' of these concentrations. CO values have been dropping steadily for several years and are now lower than background values were at the time of the CO SIP attainment demonstration in 1992. While we observed concentrations over 13 ppm in the 1980's, we are now seeing these values at approximately 2 ppm. This means we are seeing almost no contributions from automobiles at this time. Much of this improvement can be attributed to newer cars with advanced anti-pollution controls.

The following chart shows how the CO monitored design values in New York County have declined from 1988–1989 through 2010–2011. The design values are derived by first taking the second highest 8-hour value for each site in the county for each year. Of these, the highest value for each year (from all of the sites in the county) is the design value for that year. Thus, the design value went from 13.5 ppm in 1988–1989 to 1.8 ppm in 2010–2011.



V. What is EPA's evaluation?

Revisions to SIP-approved control measures must meet the requirements of the Clean Air Act (CAA) section 110(l) to be approved by EPA. Section 110(l) states: ''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Chapter.''

EPA interprets section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. EPA also interprets section 110(l) to require a demonstration addressing all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. Thus, for example, modification of a SIP-approved measure which may impact nitrogen oxide emissions, may also impact particulate matter emissions, and this would have to be evaluated. The scope and rigor of an adequate section 110(l) demonstration of noninterference depends on the air quality status of the area, the potential impact of the revision on air quality, the pollutant(s) affected, and the nature of the applicable CAA requirements.

As discussed previously, the air quality data shows a striking downward trend in ambient CO concentrations in the NYMA area for the past twenty years. This dramatic improvement can be attributed to the Federal Motor Vehicle Turnover Program along with advanced anti-pollution controls on motor vehicles.

The NYMA has been attaining the CO standard since 1993. As discussed in Section II, above, on April 19, 2002, EPA published a final rule redesignating the area to attainment. A maintenance plan explaining how the area will maintain the CO standard has been in place since that time. Action on a second 10 year maintenance plan explaining how the area will continue to attain the CO standard for another 10 years will be taken in a separate **Federal Register** Notice.

It is important to note, aside from ozone, the NYMA is attaining the NAAQS for all of the other criteria pollutants. The area has been attaining the SO_2, NO_2, and Pb standards for many years. For CO, the area was redesignated to attainment in 2002 and is currently a maintenance area. For ozone, the area has been designated nonattainment and continues to be designated nonattainment. However, the area has attained the 1-hour ozone standard and has attained the 1997 8-hour ozone standard by its required attainment date. In addition, the area has been attaining the annual and 24-hour $PM_{2.5}$ standards and New York has proposed redesignations for both PM standards. EPA will be taking action on the $PM_{2.5}$ standards in a separate **Federal Register** Notice.

EPA reviewed New York's proposed change to its CO attainment demonstration to determine whether the change will add or contribute to any air quality violations. EPA proposes to determine that removal of the limited off-street parking program from the previous federally approved CO attainment demonstration will not add or contribute to an already existing air quality violation, primarily because there is no existing air quality violation. EPA, in essence, continues to evaluate the New York CO SIP because New York continues to have their CO maintenance plan in place. This plan meets the requirements set forth in section 175A of the CAA and provides for continued attainment of the CO NAAQS.

As for the only other pollutants, ozone and $PM_{2.5}$, for which there may be any potential impact on air quality, EPA notes that for each of these pollutants, New York has developed several other revisions to the SIP to continue the reductions of emissions toward meeting the NAAQS. Specifically for ozone, EPA approved New York's reasonable further progress plan and attainment demonstration for NYMA (see 76 FR 51264 (Aug. 18, 2011) and 78 FR 9596 (Feb. 11, 2013), respectively) which included those measures necessary to attain and maintain the standard. Also, on June 15, 2001 and supplemented on October 1, 2001, New York submitted to EPA its assessment of whether any Reasonably Available Control Measures (RACM) are available to advance the 1-hour ozone attainment date from 2007 to an earlier year for the New York Metro Area. In this study New York evaluated the emissions reductions associated with several transportation control measures. EPA approved New York's RACM Analysis on February 4,

2002 (67 FR 5170) and determined that there were no additional RACMs (including the transportation control measures) that, when implemented, would advance the attainment date in the NYMA from 2007 to an earlier year. In addition, to address the RACM requirement for the 1997 8-hour ozone standard, New York did a similar analysis and determined that there were additional measures that New York State believes represent RACM as they are reasonably available and can be expected to advance the attainment date and contribute to reasonable further progress. However, the measures identified by New York were all stationary source related and have since been adopted and implemented by New York State. On July 13, 2010 (75 FR 43066), EPA approved New York's RACM analysis for the 1997 8-hour ozone standard.

New York developed a RACM analysis for the 1997 annual $PM_{2.5}$ NAAQS that was submitted to EPA on October 27, 2009. Although EPA has not yet proposed action on the $PM_{2.5}$ RACM analysis submitted by the state, New York has adopted and implemented control measures that will provide for additional emissions reductions of $PM_{2.5}$ and its precursors since the NYMA first demonstrated attainment with the 1997 annual $PM_{2.5}$ NAAQS. The measures will be undergoing EPA rulemaking in the near future and, if approved, will become federally enforceable. These measures will collectively help ensure continued compliance with both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. These measures include New York's Hot Mix Asphalt Production Plants rule (6 NYCRR Part 212.12), Reasonably Available Control Technology for Major Facilities of Oxides of Nitrogen (6 NYCRR Part 227–2), and Best Available Retrofit Technology (6 NYCRR Part 249).

EPA recognizes that DEC's April 7, 2007 SIP submittal is asserting that off-street parking is regulated by the New York City Department of City Planning and its zoning resolutions and not by the CO SIP.

EPA proposes to determine that removal of this one Transportation Control Measure (TCM) will not interfere with air quality or attainment of the NAAQS. In addition, New York has revised the rules which address TCMs before and concluded not to rely on these similar measures in more recent SIP actions. This provides further evidence to lead EPA to determine that this measure will not have an impact on air quality.

We are aware that any new construction project using federal funds must undergo a review pursuant to the National Environmental Policy Act (NEPA), [42 U.S.C. 4321 et seq. Specifically, all federal agencies are to prepare detailed assessments of the environmental impacts of and alternatives to major federal actions significantly affecting the environment. These documents are commonly referred to as environmental impact statements (EIS). The public has an important role in the NEPA process, particularly during scoping, in providing input on what issues should be addressed in an EIS and in commenting on the findings in an agency's NEPA documents. The public can participate in the NEPA process by attending NEPA-related hearings or public meetings and by submitting comments directly to the lead agency. The lead agency must take into consideration all comments received from the public and other parties on NEPA documents during the comment period.

New York has demonstrated that the changes to its CO SIP will not interfere with attainment and maintenance of the NAAQS for all criteria pollutants. EPA proposes to find that New York has satisfied the demonstration of noninterference required by CAA section 110(l).

VI. What are EPA's conclusions?

EPA is proposing to approve New York's request to remove a reference to a limited off-street parking program in New York County because this SIP revision will not cause an exceedance of the NAAQS. EPA reviewed the public comments from the July 17, 2007 public hearing record. EPA agrees with New York's responses that New York City continues to run the limited off-street parking program and, although New York City may have relaxed aspects of the program, there is no evidence that this relaxation caused any degradation in CO air quality in the area. In addition, New York did not rely on any emission reductions from this program in its SIP modeling to support the demonstration of attainment of the CO standard. Finally, any new construction project in the area would have to undergo a NEPA process. The NEPA process ensures that a NAAQS violation would not occur due to the project in question.

EPA's review of the materials submitted indicates that New York has revised its CO SIP in accordance with the requirements of the CAA, 40 CFR Part 51 and all of EPA's technical requirements for a CO SIP. Therefore, EPA is proposing to approve the removal of a reference to a limited off-street parking program in New York County.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 1, 2013.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2013–08670 Filed 4–11–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2013–0109; A–1–FRL–9799–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Connecticut; 111(d)/129 Revised State Plan for Large and Small Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Clean Air Act 111(d)/129 State Plan revisions for Large and Small Municipal Waste Combustors (MWC) submitted by the Connecticut Department of Energy and Environmental Protection (DEEP) on October 22, 2008. The revised Plan is in response to amended emission guidelines (EGs) and new source performance standards (NSPS) for Large MWCs promulgated on May 10, 2006. Connecticut DEEP's State Plan is for implementing and enforcing provisions at least as protective as the EGs applicable to existing Large and Small MWC units pursuant to 40 CFR part 60, Subparts Cb and BBBB, respectively.

DATES: Written comments must be received on or before May 13, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2013–0109 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: mcdonnell.ida@epa.gov*
3. *Fax:* (617) 918–0653.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2013–0109'', Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxic, & Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxic, & Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxic, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: OEP05–2, Boston, MA, 02109–0287. The telephone number is (617) 918–1287. Mr. Bird can also be reached via electronic mail at *bird.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's State Plan revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: March 27, 2013.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2013–08644 Filed 4–11–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2012–0580 FRL–9798–4]

RIN 2060–AM09

Protection of Stratospheric Ozone: Revision of the Venting Prohibition for Specific Refrigerant Substitutes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to amend the regulations promulgated as part of the National Recycling and Emission Reduction Program under section 608 of the Clean Air Act. EPA is proposing to exempt from the prohibition under section 608 on venting, release and disposal certain refrigerant substitutes listed as acceptable or acceptable subject to use conditions in regulations promulgated as part of EPA's Significant New Alternative Policy Program under section 612 of the Act on the basis of current evidence that their venting, release and disposal does not pose a threat to the environment.

DATES: Written comments on this proposed rule must be received by the EPA Docket on or before on June 11, 2013. Any Party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Standard Time on April 29, 2013. If a hearing is held, it will take place on or about May 7, 2013 at EPA Headquarters in Washington, DC. EPA will post a notice in our Web site, *http://www.epa.gov/ozone/strathome.html,* announcing further information should a hearing take place.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2012–0580. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy from the EPA Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This 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 Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Sally Hamlin Stratospheric Protection Division, Office of Air and Radiation, MC 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9711; fax number: (202) 343–2338; email address: *hamlin.sally@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposed action, if finalized as proposed, would extend the exemption from the venting prohibition at 40 CFR 82.154(a)(1) to certain refrigerant substitutes in certain end-uses for which EPA has found the refrigerant substitutes acceptable or acceptable subject to use conditions under CAA section 612 and the implementing regulations at 40 CFR Part 82, Subpart G. Specifically, EPA is proposing to exempt from the venting prohibition isobutane (R–600a) and R–441A, which were listed as acceptable, subject to use conditions, as refrigerant substitutes in household refrigerators, freezers, and combination refrigerators and freezers, and propane (R–290), which was listed as acceptable, subject to use conditions, as a refrigerant substitute in retail food refrigerators and freezers (standalone units only).

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I. General Information

A. Does this action apply to me?

Potentially regulated entities may include, but are not limited to, the following.

TABLE 1—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE

Category	NAICS Code	Description of regulated entities
Services	811412	Appliance repair and maintenance.
Industry	333415	Manufacturers of refrigerators, freezers, and other refrigerating or freezing equipment, electric or other; heat pumps not elsewhere specified or included (NESOI); and parts thereof.
Industry	562920, 423930	Facilities separating and sorting recyclable materials from non-hazardous waste streams (e.g., scrap yards) and merchant wholesale distribution of industrial scrap and other recyclable materials.

This table is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this proposed action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in section 608 of the Clean Air Act (CAA, the Act) as amended, and relevant implementing regulations at 40 CFR Part 82, Subpart F. If you have any questions about whether this proposed action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION CONTACT**.

B. What abbreviations and acronyms are used in this action?

ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers
ANSI—American National Standards Institute
CAA—Clean Air Act
CAS—Chemical Abstracts Service
CBI—confidential business information
CFC—chlorofluorocarbon
CFR—Code of Federal Regulations
EPA—United States Environmental Protection Agency
EO—Executive Order
FR—Federal Register
GWP—Global warming potential
HCFC–22—the chemical chlorodifluoromethane, CAS Reg No. 75–45–6
HCFC–142b—the chemical 1-chloro-1,1-difluoroethane, CAS Reg No. 75–68–3
HFC—hydrofluorocarbon
HFC–134a—the chemical 1,1,1,2-tetrafluoroethane, CAS Reg. No. 811–97–2
IDLH—Immediately Dangerous to Life and Health
LFL—lower flammability limit
MVAC—motor vehicle air conditioning
NIOSH—National Institute for Occupational Safety and Health
NPRM—Notice of Proposed Rulemaking
NTTAA—National Technology Transfer and Advancement Act
ODP—ozone depletion potential
ODS—ozone-depleting substance
OMB—United States Office of Management and Budget
OSHA—United States Occupational Safety and Health Administration
PEL—Permissible Exposure Level
ppm—parts per million
REL—Recommended Exposure Level
RFA—Regulatory Flexibility Act
SBREFA—Small Business Regulatory Enforcement Fairness Act
SNAP—Significant New Alternatives Policy
STEL—Short Term Exposure Limit
TWA—Time Weighted Average
UMRA—Unfunded Mandates Reform Act

C. What should I consider as I prepare my comments for EPA?

1. Confidential Business Information (CBI)

Do not submit confidential business information (CBI) to EPA through *http://www.regulations.gov* or email. Submit information that you claim to be CBI to the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Clearly mark the part of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one

complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR 2.2.

2. Tips for Preparing Your Comments

When submitting comments, remember to do the following:

(a) Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

(b) Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

(c) Explain why you agree or disagree with the proposal; suggest alternatives and substitute language for your requested changes.

(d) Describe any assumptions and provide any technical information and/or data that you used in preparing your comments.

(e) If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

(f) Provide specific examples to illustrate your concerns, and suggest alternatives.

(g) Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

(h) Make sure to submit your comments by the comment period deadline identified.

II. How does the national recycling and emission reduction program work?

A. What are the statutory requirements under section 608 of the Clean Air Act?

Section 608 of the Act as amended, titled *National Recycling and Emission Reduction Program,* requires EPA to establish regulations governing the use and disposal of ozone-depleting substances (ODS) used as refrigerants, such as certain chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs), during the service, repair, or disposal of appliances and industrial process refrigeration (IPR), including air-conditioning and refrigeration equipment. Section 608 also prohibits any person in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of such ODS used as refrigerants therein in a manner which permits such substances to enter the environment. This prohibition similarly applies to the venting, release, or disposal of substitutes for such ODS used as refrigerants, unless the Administrator determines that venting, releasing, or disposing of such a substitute does not pose a threat to the environment.

Section 608 is divided into three subsections. Briefly, section 608(a) requires EPA to promulgate regulations to reduce the use and the emissions of class I substances (e.g., CFCs and halons) and class II substances (HCFCs) to the lowest achievable level and to maximize the recapture and recycling of such substances. Section 608(b) requires that the regulations promulgated pursuant to subsection (a) contain standards and requirements for the safe disposal of class I and class II substances. Finally, section 608(c) contains self-effectuating provisions that prohibit any person from knowingly venting, releasing or disposing of any class I or class II substances, and their substitutes, used as refrigerants in appliances or IPR in a manner which permits such substances to enter the environment during maintenance, repairing, servicing, or disposal of appliances or IPR.

EPA's authority to propose the requirements in this Notice of Proposed Rulemaking (NPRM) is based on section 608. As noted above, section 608(a) requires EPA to promulgate regulations regarding use and disposal of class I and II substances to ''reduce the use and emission of such substances to the lowest achievable level'' and ''maximize the recapture and recycling of such substances.'' Section 608(a) further provides that ''[s]uch regulations may include requirements to use alternative substances (including substances which are not class I or class II substances) * * * or to promote the use of safe alternatives pursuant to section [612] or any combination of the foregoing.'' Section 608(c)(1) provides that, effective July 1, 1992, it is ''unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment.'' The statute exempts from this self-effectuating prohibition ''[d]e minimis releases associated with good faith attempts to recapture and recycle or safely dispose'' of such a substance. To implement and enforce the venting prohibition [1], EPA, as codified in its regulations, interprets releases to meet the criteria for exempted ''de minimis'' releases if they occur when the recycling and recovery requirements of regulations promulgated under sections 608 and 609 are followed. 40 CFR 82.154(a)(2).

Effective November 15, 1995, section 608(c)(2) of the Act extends the prohibition in section 608(c)(1) to knowingly venting or otherwise knowingly releasing or disposing of any refrigerant substitute for class I or class II substances by any person maintaining, servicing, repairing, or disposing of appliances or IPR. This prohibition applies to any such substitute substance unless the Administrator determines that such venting, releasing, or disposing ''does not pose a threat to the environment.'' Thus, section 608(c) provides EPA authority to promulgate regulations to interpret, implement, and enforce this venting prohibition, including authority to implement section 608(c)(2) by exempting certain substitutes for class I or class II substances from the prohibition when the Administrator determines that such venting, release, or disposal does not pose a threat to the environment.

B. What are the regulations against venting, releasing or disposing of refrigerant substitutes?

Final regulations promulgated under section 608 of the Act, published on May 14, 1993 (58 FR 28660), established a recycling program for ozone-depleting refrigerants recovered during the servicing and maintenance of air-conditioning and refrigeration appliances. In the same 1993 final rule, EPA also promulgated regulations implementing the section 608(c) prohibition on knowingly venting, releasing or disposing of class I or class II controlled substances.[2] These regulations substantially reduced the use and emissions of ozone-depleting refrigerants.

On June 11, 1998, EPA proposed to implement and clarify the requirements of section 608(c)(2) of the Act by clarifying how the prohibition on venting extends to substitutes for CFC and HCFC refrigerants (63 FR 32044). EPA issued a final rule March 12, 2004 (69 FR 11946) and a second rule on April 13, 2005 (70 FR 19273) clarifying

[1] In this proposal, EPA sometimes uses the shorthand ''venting prohibition'' to refer to the section 608(c) prohibition of knowingly venting, releasing, or disposing of class I or class II substances, and their substitutes.

[2] A list of ozone-depleting substances is available in Appendices A and B to Subpart A of Part 82.

how the venting prohibition in section 608(c) applies to refrigerant substitutes (e.g., hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs) in part or whole) during the maintenance, service, repair, or disposal of appliances. These regulations were codified at 40 CFR part 82, subpart F. The regulation at 40 CFR 82.154(a) states that:

''[e]ffective June 13, 2005, no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute [3] from such appliances, with the exception of the following substitutes in the following end-uses:

i. Ammonia in commercial refrigeration, or in [IPR] or in absorption units;

ii. Hydrocarbons in [IPR] (processing of hydrocarbons);

iii. Chlorine in [IPR] (processing of chlorine and chlorine compounds);

iv. Carbon dioxide in any application;

v. Nitrogen in any application; or

vi. Water in any application.

(2) The knowing release of a refrigerant or non-exempt substitute subsequent to its recovery from an appliance shall be considered a violation of this prohibition. De minimis releases associated with good faith attempts to recycle or recover refrigerants or non-exempt substitutes are not subject to this prohibition.''

As explained in EPA's earlier rulemaking concerning refrigerant substitutes, EPA has not promulgated regulations requiring certification of refrigerant recycling/recovery equipment intended for use with substitutes to date (70 FR 19275; April 13, 2005). However, as EPA has noted, the lack of a current regulatory provision should not be considered as an exemption from the venting prohibition for substitutes that are not expressly exempted in § 82.154(a). *Id.* EPA has also noted that, in accordance with section 608(c) of the Act, the regulatory prohibition at § 82.154(a) reflects the statutory references to *de minimis* releases of substitutes as they pertain to good faith attempts to recapture and recycle or safely dispose of non-exempted substitutes. *Id.*

III. What is EPA's determination of whether venting, release or disposal poses a threat to the environment?

Section 608(c)(2) extends the prohibition on venting in section 608(c)(1) to substitutes for class I or class II substances, unless the Administrator determines that such venting, releasing, or disposing does not pose a threat to the environment. As explained above, in earlier rulemakings, EPA has exempted some refrigerant substitutes in specified end uses from the venting prohibition under CAA section 608, as addressed under 40 CFR 82.154(a)(1).

Today EPA is proposing a determination to exempt from the venting prohibition three hydrocarbon refrigerant substitutes that EPA has previously listed as acceptable or acceptable subject to use conditions in the specified end uses under the Significant New Alternatives Policy (SNAP) program (76 FR 78832, December 20, 2011) as the venting, release, or disposal of these substitutes does not pose a threat to the environment. Specifically, EPA is proposing to exempt from the venting prohibition isobutane (R–600a) and R–441A, which were listed as acceptable, subject to use conditions, as refrigerant substitutes in household refrigerators, freezers, and combination refrigerators and freezers, and propane (R–290), which was listed as acceptable, subject to use conditions, as a refrigerant substitute in retail food refrigerators and freezers (standalone units only).

This proposed exemption to the venting prohibition would not apply to refrigerants that are hydrocarbon blends containing any amount of any CFC, HCFC, HFC[4], or PFC. EPA is seeking comment on this proposal that blends of hydrocarbons with any amount of any CFC, HCFC, HFC, or PFC not be exempt from the current prohibition on venting, release or disposal.

The SNAP program, established under section 612 of the CAA, requires EPA to publish a list of substitutes for class I and class II substances that are unacceptable for certain uses and those that are acceptable for specific uses. In identifying acceptable substitutes under section 612(c), EPA is required to consider whether those substitutes present a significantly greater risk to human health and the environment as compared with other substitutes that are currently or potentially available. On March 18, 1994, EPA published the original rulemaking under section 612 of the CAA (59 FR 13044) which established the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in major industrial use sectors. The regulations are codified at 40 CFR Part 82, subpart G.

For purposes of section 608(c)(2) of the CAA, EPA considers two factors in determining whether or not venting, release, or disposal of a substitute refrigerant during the maintenance, service, repair or disposing of appliances poses a threat to the environment. See 69 FR 11948 (March 12, 2004). First, EPA determines whether venting, release, or disposal of the substitute refrigerant poses a threat to the environment due to inherent characteristics of the refrigerant, such as global warming potential. Second, EPA determines whether and to what extent such venting, release, or disposal actually takes place during the maintenance, servicing, repairing, or disposing of appliances, and to what extent such venting, release, or disposal is controlled by other authorities, regulations, or practices. To the extent that such releases are adequately controlled by other authorities, EPA defers to those authorities.

In addressing these two factors, the analysis below discusses the potential environmental impacts and existing authorities, practices, and controls for isobutane (R–600a) and R–441A as substitutes in household refrigerators, freezers, and combination refrigerators and freezers; and propane (R–290) as a substitute in retail food refrigerators and freezers (standalone units only). These refrigerants and end-uses were evaluated and determined to be acceptable or acceptable subject to use conditions under SNAP in the December 20, 2011 final rule.

A. Potential Environmental Impacts

In the December 20, 2011 SNAP rule, EPA's analysis of environmental impacts for these refrigerant substitutes discussed four types of environmental risks: ozone depletion potential, global warming potential, volatile organic compound (VOC) effects, and ecosystem risks (76 FR 78838). For this proposal, EPA's discussion of potential environmental impacts for these refrigerant substitutes similarly focuses on the environmental risks associated with ozone depletion potential, global warming potential, VOC effects, and ecosystem risks.

Hydrocarbons are VOCs. Hydrocarbons as VOCs can contribute to ground-level ozone (smog) formation and therefore indirectly contribute to global warming since the Intergovernmental Panel on Climate Change has identified ground-level ozone as a greenhouse gas.[5] EPA's 1994 risk screen document, which was

[3] ''Substitute,'' as defined at 40 CFR part 82, subpart F, is ''any chemical or product, whether existing or new, that is used by any person as an EPA approved replacement for a class I or II ozone-depleting substance in a given refrigeration or air-conditioning end-use.'' 40 CFR 82.152.

[4] Hydrofluorocarbons (HFCs) also include Hydrofluoroolefins (HFOs), which have at least one double bond between carbon atoms.

[5] Intergovernmental Panel on Climate Change (IPCC) 2001.

developed for the initial rule establishing the SNAP program listing hydrocarbons acceptable for an end-use (i.e., industrial process refrigeration—processing of hydrocarbons), describes the potential emissions of VOCs from all substitutes for all end-uses in the refrigeration and air-conditioning sector as likely to be insignificant relative to VOCs from all other sources (i.e., other industries, mobile sources, and biogenic sources).[6] A more recent analysis indicates that in the extremely unlikely event that all appliances in end-uses recently found acceptable or acceptable with use conditions under SNAP (76 FR 78838; December 20, 2011) were to leak their entire hydrocarbon charge over the course of a year, the resulting increase in annual VOC emissions, as a percent of all annual VOC emissions in the U.S., would be negligible.[7] Therefore, the use of these hydrocarbons in the household refrigeration and retail food refrigeration end-uses is sufficiently small that it would not have a noticeable impact on local air quality.

The global warming potential (GWP) of hydrocarbons is very low (i.e., less than 10). When compared to the GWP of other refrigerant substitutes, the GWPs of hydrocarbons are hundreds or thousands of times smaller, signifying significantly reduced global warming impact on a molecule per molecule basis. For example, the refrigerant substitutes R134A, R404A, R407C, and R410A have a GWP of 1430, 3920, 1770, and 2090, respectively over a 100 year time horizon compared with the hydrocarbons in this rule that have a GWP of less than 10 integrated over a 100 year time horizon.[8] As noted in the preceding paragraph, the volume of hydrocarbons listed as acceptable or acceptable with use conditions under SNAP that could be released from the specific uses relevant to this proposal would be small. Relative to the enormous volume of carbon dioxide (CO_2) that is emitted to the atmosphere, with its global warming potential (GWP) of one (1), the volume of hydrocarbons that are listed as refrigerant substitutes under SNAP that might be released to the atmosphere is so small that it would have a negligible impact on the global climate.

Hydrocarbons have an ozone depletion potential (ODP) of zero.[9] The hydrocarbons listed as acceptable or acceptable with use conditions under SNAP do not contain chlorine or bromine, the two most prominent elements in chemicals that deplete stratospheric ozone.

Similarly, EPA expects that releases of these hydrocarbons into the environment from their use as refrigerant substitutes will not pose significant ecosystem risks. Hydrocarbons are volatile and break down in the atmosphere into naturally-occurring compounds in a relatively short time frame, with atmospheric lifetimes between 7–8 days. Due to their fast interaction with OH radicals in the atmosphere and resulting decomposition, and the known degradation products from this reaction with OH radicals, EPA does not expect any significant amount of deposition to adversely affect aquatic or terrestrial ecosystems (76 FR 78838; December 20, 2011).

Based on this analysis, EPA is proposing to find that the venting, release, or disposal of isobutane (R–600a) and R–441A as substitutes in household refrigerators, freezers, and combination refrigerators and freezers; and propane (R–290) as a substitute in retail food refrigerators and freezers (standalone units only) is not expected to pose a significant threat to the environment based on the inherent characteristics of these substances.

B. Toxicity and Flammability

In this section the Agency is providing information about toxicity and flammability of the three hydrocarbon refrigerants listed as acceptable or acceptable with use conditions under SNAP (76 FR 78832; December 20, 2011). Additional information is available in that final SNAP rule.

Hydrocarbons, including propane, isobutane and the hydrocarbon blend known as R–441A, are classified as A3 refrigerants by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 34–2010, indicating that they have low toxicity and high flammability. Like most refrigerants, hydrocarbons can displace oxygen at high concentrations and cause asphyxiation. The National Institute for Occupational Safety and Health (NIOSH) recommended exposure limits (RELs) time weighted average (TWAs) [10] for propane, isobutane, and butane, are 1,000ppm, 800ppm, and 800ppm, respectively. The Occupational Safety and Health Administration (OSHA) established a Permissible Exposure Limit (PEL) for propane of 1,000 ppm, and NIOSH established levels Immediately Dangerous to Life and Health (IDLHs) of 20,000 ppm and 50,000 ppm for propane and butane, respectively.

In prior actions under SNAP, EPA has evaluated the risks hydrocarbons used in certain refrigerant end uses could pose to workers and consumers and found that occupational exposures to these hydrocarbons should not pose a toxicity threat in these end-uses because the time-weighted average (TWA) exposures were significantly below industry and government occupational exposure limits (76 FR 78839; December 20, 2011).

EPA estimated the maximum TWA exposure for worker exposure scenarios and compared this value to relevant exposure limits for isobutane, propane, and hydrocarbon blends. The modeling results indicated that both the short-term (15-minute and 30-minute) and long-term (8-hour) worker exposure concentrations at no point are likely to exceed 2 percent (for isobutane), 50 percent (for propane), and 4 percent (for hydrocarbon blends) of the NIOSH REL for isobutane and propane or the refrigerant components for the hydrocarbon blends (ICF, 2009). [11]

[6] EPA, 1994. Significant New Alternative Policy Technical Background Document.

[7] As EPA noted in the December 20, 2011 SNAP rule, as a percent of annual VOC emissions in the U.S., this represents approximately 5×10^{-6} percent (for isobutane in the household food refrigeration end-use), 5×10^{-6} percent (for propane in the retail food refrigeration end-use), and 3×10^{-7} percent (for R–441A in the household food refrigeration end-use) (76 FR 78838).

[8] Global warming potential values are from the IPCC Fourth Assessment Report: Climate Change 2007 (AR4).

[9] A chemical's ODP is the ratio of its impact on stratospheric ozone compared to the impact of an identical mass of trichlorofluoromethane (CFC–11). The ODP of CFC–11 is defined as 1.0. The GWP quantifies a substance's potential integrated climate forcing relative to carbon dioxide (CO_2) over a specified time horizon. The 100-year integrated GWPs of isobutane, propane, and hydrocarbon blend R–441A were estimated to be 8, 3, and less than 5, respectively (76 FR 78838; December 20, 2011).

[10] REL–TWA is a time weighted average concentration for up to a 10-hour workday during a 40-hour workweek (NIOSH, 2005).

[11] SNAP hydrocarbon rule docket EPA–HQ–OAR–2009–0286: 1) ICF, 2009. ICF Consulting. 'Significant New Alternatives Policy Program Refrigeration and Air Conditioning Sector—Risk Screen on Substitutes for CFC–12 in Household Refrigerators and Household Freezers—Substitute: Isobutane'', May 22, 2009. 2) ICF, 2009. ICF Consulting. ''Significant New Alternatives Policy Program Refrigeration and Air Conditioning Sector—Risk Screen on Substitutes for CFC–12, HCFC–22 and R502 in Retail Food Refrigeration—Substitute: Propane'', May 26, 2009. 3) ICF, 2009. ICF Consulting. ''Significant New Alternatives Policy Program in the Household Refrigeration Sector—Risk Screen on Substitutes for CFC–12 and HCFC–22 in Household Refrigerators, Household Freezers and Window AC Units—Substitute: HCR–188C'', July 17, 2009. 4) ICF, 2009. ICF Consulting. ''Significant New Alternatives Policy Program in the Household Refrigeration Sector—Risk Screen on Substitutes for CFC–12 and HCFC–22 in Household Refrigerators and Freezers–Substitute: HCR–188C1'', November 6, 2009.

EPA assessed the consumer and end-user exposure to the three hydrocarbons in both the household refrigeration end-use and for the retail food end-use. Even under the very conservative reasonable worst-case scenarios that were modeled, EPA found that exposures to any of the three hydrocarbons would not pose a toxicity threat because the TWAs were significantly lower than the NOAEL and/or acute exposure guideline level (AEGL).[12]

EPA has also evaluated the exposure risks to the general population for the use of the three hydrocarbons as a refrigerant in their respective end-uses. EPA concluded in a SNAP final rule (76 FR 78832; December 20, 2011) that these hydrocarbons are unlikely to pose a toxicity risk to the general population, when used according to the applicable use conditions or regulations.

Hydrocarbons have lower flammability limits (LFLs)[13] ranging from 16,000 ppm to 21,000 ppm.[14] In prior rulemakings, EPA evaluated the potential risks of fire from the use of hydrocarbons as refrigerants in certain appliances, and engineering approaches to avoid ignition sources from the appliance. To address flammability risks, EPA issued recommendations for their safe use in certain end-uses through SNAP rulemakings (59 FR 13044; 76 FR 78832) and specified use conditions for some end-uses.[15] These SNAP rules indicated that existing regulatory requirements and industry standards and practices adequately protect workers, the general population, and the environment from the flammability risks from hydrocarbon refrigerants. Furthermore, the Agency believes that the flammability risks and occupational exposures to hydrocarbons are adequately regulated by OSHA, building, and fire codes at a local and national level.

C. Authorities, Controls and Practices

Within the heating, ventilation, and air-conditioning (HVAC) sector and the refrigeration sector, EPA has approved hydrocarbons under the SNAP program for use in IPR (processing of hydrocarbons), in household refrigeration, and in retail food (stand-alone units) refrigeration systems. In these applications, hydrocarbons have the potential to come into contact with workers, the general population, and the environment. However, analyses performed for both this proposed rule and the SNAP rules issued in 1994 and 2011 (59 FR 13044 and 76 FR 38832, respectively) indicate that existing regulatory requirements and industry practices designed to limit and control these substances adequately control the emission of the listed hydrocarbon refrigerants. EPA concludes that the limits and controls under other authorities, regulations or practices adequately control the release and exposure to the three hydrocarbons and mitigate risks from any possible release. This conclusion is relevant to the second factor mentioned above in the overall determination of whether venting, release, or disposal of a substitute refrigerant poses a threat to the environment—that is, a consideration of the extent that such venting, release, or disposal is adequately controlled by other authorities, regulations, or practices. As such, this conclusion is another part of the determination that the venting, release or disposal of these three hydrocarbon refrigerants does not pose a threat to the environment.

Industry service practices for hydrocarbon refrigeration equipment, according to industry and OSHA guidelines and standards, include monitoring efforts, engineering controls, and operating procedures. System alarms, flame detectors, and fire sprinklers are used to protect worker, process, and storage areas. During servicing, OSHA requirements are followed, including continuous monitoring of explosive gas concentrations and oxygen levels.[16]

In general, hydrocarbon emissions from refrigeration systems are likely to be significantly smaller than those emanating from the industrial process and storage systems, which are controlled for safety reasons. Further, in the SNAP rule listing hydrocarbons as acceptable subject to use conditions for use in household and commercial stand-alone refrigerators and freezers, the amount of refrigerant from a refrigerant loop is limited (57g for household refrigerators and freezers and 150g for commercial stand-alone refrigerators and freezers), indicating that hydrocarbon emissions are likely to be relatively small and adequately controlled.

Occupational exposures to hydrocarbons are primarily controlled by OSHA requirements and national and local building and fire codes. OSHA's Process Safety Management, confined space entry, and HAZWOPER requirements apply to all hydrocarbon refrigerants. These requirements include employee training, emergency response plans, air monitoring, and written standard operating procedures.

Hydrocarbons are regulated as VOCs under sections of the Clean Air Act that address attainment and maintenance of the National Ambient Air Quality Standards for ground level ozone, including those sections addressing development of State Implementation Plans and those addressing permitting of VOC sources.

The release and/or disposal of many refrigerant substitutes, including hydrocarbons, are controlled by other authorities including those established by OSHA and NIOSH guidelines, various standards, and state and local building codes. To the extent that release during the maintenance, repair, servicing or disposal of appliances is controlled by regulations and standards of other authorities, EPA believes these practices and controls for the use of hydrocarbons are sufficiently protective. These practice and controls could help mitigate any risk to the environment that may be posed by the venting, release or disposal of these three hydrocarbon refrigerants during the maintaining, servicing, repairing, or disposing of appliances. This conclusion addresses the second factor in the analysis described above and is thus part of the determination that the venting, release or disposal of these hydrocarbon refrigerant substitutes does not pose a threat to the environment.

D. Conclusion

EPA has reviewed the potential environment impacts of three hydrocarbon refrigerants in the end uses that we have listed as acceptable or acceptable subject to use conditions under SNAP, as well as the authorities, controls and practices in place for these three hydrocarbon refrigerants. Based on this review, EPA concludes that these three hydrocarbon refrigerants are not expected to pose a significant threat to the environment based on the inherent characteristics of these substances and the limited quantities used in the relevant applications. EPA additionally concludes that existing authorities, controls, and practices help mitigate environmental risk from the release of these three hydrocarbon refrigerants. In light of these two conclusions, EPA is proposing to determine, in accordance

[12] *Ibid.*

[13] LFL is the minimum concentration in air at which flame propagation occurs.

[14] Isobutane, propane and a hydrocarbon blend, R–441a, have a LFL of 18,000ppm, 21,000ppm, and 16,000ppm, respectively.

[15] Use conditions for hydrocarbons in certain refrigeration end-uses are found at 40 CFR part 82 subpart G, appendix R.

[16] The OSHA standards and requirements for servicing hydrocarbons, as per 29 CFR 1910, include parts 1910.24 (on ventilation), 1910.106 (on flammable and combustible liquids), 1910.110 (on storage and handling of liquified petroleum gases), and 1910.1000 (on toxic and hazardous substances).

with 608(c)(2), that based on current evidence and risk analyses, the venting, release or disposal of these hydrocarbon refrigerants does not pose a threat to the environment. EPA is therefore proposing to extend the regulatory exemption from the venting prohibition at 40 CFR 82.154(a)(1) that is currently in place for hydrocarbons used in IPR, to include the other uses for which hydrocarbons have been found acceptable or acceptable subject to conditions of use under the SNAP program. EPA requests comment on this proposed determination and action.

IV. What revision to the venting prohibition is EPA proposing?

EPA is proposing to revise the existing prohibition against knowing venting of refrigerant substitutes, extending the exemption to certain refrigerants consisting wholly of hydrocarbons and used in refrigeration uses listed by EPA as acceptable or acceptable subject to use conditions under EPA's SNAP program.[17] This is separate from and in addition to the current exemption for hydrocarbon refrigerants used in IPR.[18] EPA is proposing to find that for the purposes of CAA section 608(c)(2), the venting, release or disposal of such hydrocarbon refrigerants from appliances does not pose a threat to the environment, considering both the inherent characteristics of these substances and other authorities, controls and practices that apply to such refrigerants. This proposed exemption to the venting prohibition would apply to the three hydrocarbons where they are used in household food refrigeration units and retail food refrigeration (stand-alone units); a separate exemption has already been promulgated for certain hydrocarbons in IPR (processing of hydrocarbons), and we are not proposing to amend that exemption in this rulemaking. Today's proposal would exempt from the prohibition against knowing venting during the maintenance, servicing, repair or disposal of appliances three hydrocarbon refrigerants listed as acceptable or acceptable subject to use conditions by the SNAP program: propane, isobutane, and the hydrocarbon blend R–441A.

Today's proposed changes would not affect the existing regulatory exemptions from the venting prohibition under 608(c)(2) for refrigerant substitutes (i.e., ammonia in commercial refrigeration, or IPR, or in absorption units; hydrocarbons in IPR—processing of hydrocarbons; chlorine in IPR—processing of chlorine and chlorine compounds; carbon dioxide in any application; nitrogen in any application; or water in any application). EPA previously issued a determination finding these refrigerant substitutes do not pose a threat to the environment and amended the regulations at § 82.154(a)(1) to exempt these substitutes in these uses from the venting prohibition (69 FR 11946, March 12, 2004; 70 FR 19278, April 13, 2005). EPA is not proposing to amend those provisions, and therefore, this proposal should not affect those prior exemptions to the venting prohibition.

EPA requests comments on today's proposed determination exempting from the venting prohibition three hydrocarbon refrigerants listed as acceptable or acceptable subject to use conditions by the SNAP program (propane, isobutane, and the hydrocarbon blend R–441A). Finally, EPA is not proposing recapture or recycling requirements for hydrocarbons at this time as the Agency believes that recovery equipment designed specifically for flammable refrigerants is not yet widely manufactured or commercially available in the U.S. However, EPA recommends the use of recovery equipment designed for flammable refrigerants, when such becomes available, in accordance with applicable safe handling practices.[19] While EPA is not proposing recapture or recycling requirements at this time, EPA often provides information concerning best practices used by technicians. Therefore, EPA requests comments on whether hydrocarbon refrigerants should be first recovered and then released to the atmosphere particularly in an area where ventilation or access to outside environment is limited (e.g., room with no windows) and whether this is already common practice today. In addition, EPA is seeking comments about what recovery equipment should be used for recovering isobutane (R–600a) and R–441A, from household refrigerators, freezers, and combination refrigerators and freezers, as well as recovering propane (R–290) from retail food refrigerators and freezers (standalone units only).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.).* This action is an Agency determination. It contains no new requirements for reporting. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart F of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control numbers 2060–0256. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in the repair and maintenance of appliances and defined by NAIC code 811412 with annual receipts of less than 14 million dollars, or engaged in separating and sorting recyclable materials from non-hazardous waste streams (e.g., scrap yards) and defined by NAIC code 562920 with annual receipts of less than 19 million dollars, and merchant wholesale distribution of industrial scrap and other recyclable materials and defined by NAIC code 423930 with

[17] Hydrocarbons (propane or R–290, butane or R–600, hydrocarbon blend A, and hydrocarbon blend B) were listed as acceptable substitutes in industrial process refrigeration (processing of hydrocarbons) (59 FR 13044). On December 20, 2011, EPA published a final rule (76 FR 78832) listing certain hydrocarbons (i.e., isobutane, propane, and hydrocarbon blend R–441A) as acceptable subject to use conditions in some refrigeration end-uses.

[18] See 40 CFR 82.154(a), 69 FR 11979, and 70 FR 19278.

[19] EPA provided recommendations on the safe use and handling of hydrocarbons in a SNAP rulemaking listing certain hydrocarbons acceptable subject to use conditions in some refrigeration end-uses (76 FR 78855; December 20, 2011). Recommendations are also found at 40 CFR part 82, subpart G, appendix R.

fewer than 100 employees (based on Small Business Administration size standards), (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule, if it becomes final, is primarily deregulatory as it would exempt persons from the prohibition under section 608(c)(2) of the Clean Air Act, and as implemented by regulations at 40 CFR 82.145(a)(1), against knowingly venting or otherwise knowingly releasing or disposing of three specific hydrocarbon refrigerants during the maintenance, servicing, repair or disposal of appliances. We have therefore concluded that today's proposed rule will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action is deregulatory in nature and, if finalized as proposed, would create an exemption from a statutory and regulatory requirement.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132 (64 FR 43255, August 10, 1999). This action is deregulatory in nature and, if finalized as proposed, would create an exemption from a statutory and regulatory requirement, which would be benefit any state, local, or tribal government to the extent that they are affected. Thus, EO 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in EO 13175 (65 FR 67249, November 6, 2000). The proposed rule, if finalized, is deregulatory in nature and would create an exemption that could be available for the tribal communities or Indian tribal governments. Thus, EO 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to the EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III in the preamble. The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to the three hydrocarbon refrigerants that are the subject of this proposal.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629; February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule exempting certain hydrocarbons from the venting prohibition in end uses listed as acceptable or acceptable subject to use conditions will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the release of hydrocarbons refrigerants would not pose a threat to the environment. This proposed action would not have any disproportionately high and adverse human health or environmental effects on any

population, including any minority or low-income population.

VI. References

The documents below are referenced in the preamble. All documents are located in the Air Docket at the address listed in section titled **ADDRESSES** at the beginning of this document. Unless specified otherwise, all documents are available in Docket ID No. EPA–HQ–OAR–2012–0580 at *http://www.regulations.gov*.

A.D. Little, 1991. Risk Assessment of Flammable Refrigerants for Use in Home Appliances (draft report). Arthur D. Little, Inc., for EPA, Division of Global Change. September 10, 1991. Docket item EPA–HQ–OAR–2009–0286–0023.

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EPA, 1994. Significant New Alternatives Policy Technical Background Document: Risk Screen on the Use of Substitutes for Class I Ozone-Depleting Substances: Refrigeration and Air Conditioning. Stratospheric Protection Division. March, 1994.

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ICF, 2011a. ICF Consulting. ''Significant New Alternatives Policy Program Refrigeration and Air Conditioning Sector—Risk Screen on Substitutes for CFC–12 and HCFC–22 in Household Refrigerators and Household Freezers— Substitute: Isobutane.'' June 2011.

ICF, 2011b. ICF Consulting. ''Significant New Alternatives Policy Program Refrigeration and Air Conditioning Sector—Risk Screen on Substitutes for CFC–12, HCFC–22 and R502 in Retail Food Refrigeration—Substitute: Propane.'' June 2011.

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ICF, 2011d. ICF Consulting. ''Additional end-uses modeling for household refrigerators and freezers.'' July 2011.

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UL, 2010. UL 471. Commercial Refrigerators and Freezers. 10th edition. Supplement SB: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. Underwriters Laboratories, Inc. November 24, 2010.

UL, 2011. Revisiting Flammable Refrigerants. White Paper. Underwriters Laboratories, Inc. February, 2011.

World Meteorological Organization (WMO), 2011. WMO Scientific Assessment of at *http://ozone.unep.org/Assessment_Panels/SAP/Scientific_Assessment_2010/index.shtml*. Ozone Depletion: 2010. Available online.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Recycling, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: March 28, 2013.

Bob Perciasepe,

Acting Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671g.

■ 2. Section 82.154 is amended by adding section vii to paragraph (a)(1) to read as follows:

§ 82.154 Prohibitions.

(a)(1) * * *

(vii) Effective [DATE 60 days after publication of final rule in the **Federal Register**], isobutane (R–600a) and R–441A as substitutes in household refrigerators, freezers, and combination refrigerators and freezers; and propane (R–290) as a substitute in retail food refrigerators and freezers (standalone units only).

[FR Doc. 2013–08667 Filed 4–11–13; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PS Docket No. 13–75; PS Docket No. 11–60; FCC 13–33]

Improving 9–1–1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission proposes a range of approaches to ensure that providers of 9–1–1 communications services implement best practices and other sound engineering principles to improve the reliability and resiliency of the Nation's 9–1–1 networks. The Notice of Proposed Rulemaking also proposes amendments to the Commission's current rules to clarify and add specificity to service providers' obligations to notify 9–1–1 call centers of communications outages. This action follows an inquiry by the Public Safety and Homeland Security Bureau into widespread 9–1–1 service outages during the ''derecho'' windstorm that affected large portions of the United States in June 2012, revealing significant vulnerabilities in current 9–1–1 network configuration and service provider maintenance practices. The Commission requests comment on these proposals to improve the reliability and resiliency of 9–1–1 networks and ensure that 9–1–1 call centers receive timely and actionable notification of service outages.

DATES: Submit comments on or before May 13, 2013 and reply comments by May 28, 2013. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before June 11, 2013.

ADDRESSES: Submit comments to the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Comments may be submitted

electronically through the Federal Communications Commission's Web site: *http://fjallfoss.fcc.gov/ecfs2/*. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in § 0.459 of the Commission's rules. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary's Office following the procedures set forth in 47 CFR 0.459. Redacted versions of confidential submissions may be filed via ECFS.

FOR FURTHER INFORMATION CONTACT: Eric P. Schmidt, Attorney Advisor, Public Safety and Homeland Security Bureau, (202) 418–1214 or *eric.schmidt@fcc.gov*. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith Boley-Herman, (202) 418–0214, or send an email to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in PS Docket No. 13–75 and PS Docket No. 11–60, released on March 20, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or online at *http://www.fcc.gov/document/improving-9-1-1-reliability*.

I. Introduction

1. In this *Notice of Proposed Rulemaking (NPRM),* we seek comment on approaches to ensure the reliability and resiliency of the communications infrastructure necessary to ensure continued availability of the Nation's 9–1–1 system, particularly during times of major disaster. We take this action in response to the findings and recommendations presented in the Public Safety and Homeland Security Bureau's (PSHSB or Bureau) January 10, 2013, report titled Impact of the June 2012 Derecho on Communications Networks and Services: Report and Recommendations (*Derecho Report),* which is available at *http://www.fcc.gov/document/derecho-report-and-recommendations*. In that report, following an extensive inquiry and review of comments, the Bureau found that the June 2012 derecho affecting the Midwest and Mid-Atlantic United States severely disrupted 9–1–1-related communications and that these disruptions were due in large part to avoidable planning and systems failures within 9–1–1 service providers' networks. The Bureau concluded that these failures could, and would, have been avoided if providers had followed industry best practices and other sound engineering principles. Accordingly, the Bureau recommended that the Commission consider action in the following areas: (1) 9–1–1 circuit auditing; (2) 9–1–1 service provider central office backup power; (3) physical diversity of monitor and control links; and (4) improved outage notification to Public Safety Answering Points (PSAPs). This *NPRM* seeks comment on approaches to implement these recommendations, taking into account the evolving nature of network technologies, as well as the continuing migration of circuit-switched services to Internet Protocol (IP)-based platforms. Thus, any rules or other policies designed to improve 9–1–1 service reliability will be developed with the ongoing transition to Next Generation 9–1–1 (NG9–1–1) in mind.

II. Discussion

A. Need for Commission Action

2. The Commission previously has addressed communications reliability issues by working with service providers to develop voluntary best practices, and by measuring the effectiveness of those best practices through outage reporting. The outage reporting process has often been effective in improving the reliability, resiliency, and security of many communications services. The June 2012 derecho, however, revealed the limits of that approach and highlighted the potential benefits and importance of supplementing a voluntary approach with respect to critical 9–1–1 communications.

3. The Commission seeks comment on the extent to which 9–1–1 failures during the derecho reflect the reliability of 9–1–1 networks nationwide. Why would PSAPs located in other parts of the Nation be more or less vulnerable to the effects of a storm like the derecho? To what extent have service providers affected by the derecho addressed vulnerabilities revealed by the storm, both in the affected region and across their entire service areas? What specific remedial actions have these service providers taken, particularly with respect to critical circuit auditing, functional central office backup power, and diversity of monitoring links, and when were those actions completed? Has the experience of the derecho caused other 9–1–1 service providers to reexamine their network architecture and maintenance practices, and what have those efforts revealed about the reliability and resiliency of the Nation's 9–1–1 infrastructure as a whole? What changes have been made to improve 9–1–1 reliability and resiliency? What assurance does the Commission have that these changes will persist?

4. Although we intend the approaches in this *NPRM* to complement and strengthen—not to replace—the Commission's current approach to network reliability, we seek comment on the appropriate balance between voluntary best practices and Commission mandates as they relate to 9–1–1 communications. In light of the many existing best practices addressing these issues and service providers' failure to implement them fully, however, we seek comment on whether there is any assurance that additional voluntary best practices would necessarily lead to effective and consistent compliance without additional Commission action, especially after such dangerous failures potentially affected millions of people. The *Derecho Report* noted that multiple 9–1–1 service providers implemented best practices to varying degrees, or adopted key best practices in theory, with substantial exceptions in day-to-day operation. To what extent are network reliability best practices, particularly those regarding physical auditing of critical circuits, functional and well-maintained central office backup power, and diversity of network monitoring links, followed today? What evidence exists that they are followed? What circumstances might lead to these best practices not being followed? What measures can be taken to compensate for the failure to implement a best practice so that 9–1–1 reliability is not impaired? What evidence exists to substantiate that these measures are taken routinely when best practices are not followed? What incentives do service providers have to implement best practices, and are those incentives sufficient? Beyond general agreement with best practices, what assurances can 9–1–1 service providers make to ensure rigorous implementation on a nationwide basis?

5. Which advisory bodies do service providers look to for guidance regarding

best practices, *e.g.,* Communications Security, Reliability, and Interoperability Council (CSRIC), Alliance for Telecommunications Industry Solutions (ATIS) Network Reliability Steering Committee (NRSC), Association of Public-Safety Communications Officials (APCO), National Emergency Number Association (NENA), or other organizations? What best practices are followed today other than those adopted by CSRIC? What relevant industry standards are followed routinely? If so, are they preferred over the best practices adopted by CSRIC? What evidence exists that these standards are routinely followed? How do they differ from the best practices issued by CSRIC? For example, are there specific regional circumstances that would make it more difficult or expensive to perform critical circuit auditing? Do service providers take measures to compensate for failing to implement the best practice in these instances? What evidence exists to substantiate that these measures are actually taken? Should certain best practices be considered critical for some parts of the country and not others? If existing best practices have proven difficult for service providers to implement or inadequate to prevent communications outages, what can be done to update or revise those practices to reflect lessons learned in the derecho? Which best practices, specifically, should be added or expanded, and would such changes make service providers more likely to comply in the future?

B. Entities Subject to Proposals

6. We seek comment on the class of entities to which the proposals put forward for consideration in this *NPRM* would apply. Throughout this *NPRM* we use the term ''9–1–1 service provider,'' defined in the *Derecho Report* as a communications provider ''responsible for routing and delivering 9–1–1 calls to PSAPs.'' These providers are typically ILECs, though as the Bureau explained, the transition to NG9–1–1 may broaden the class of entities that perform this function. Accordingly, we seek comment on defining the term ''9–1–1 service provider.'' We anticipate that the proposals in this *NPRM* would apply to all 9–1–1 service providers, and tentatively define that term to include all entities, including ILECs that provide 9–1–1 call routing, automatic location information (ALI), emergency services Internet protocol networks (ESInets), and similar services directly to a PSAP. Is that definition sufficient to capture all the entities that both now and in the future could provide functions necessary to the provision of such services to a PSAP? If not, how should this term be defined? For example, should any of the proposals apply to other types of wireline service providers, wireless service providers, interconnected VoIP service providers, or other potential means of reaching a PSAP as NG9–1–1 broadens the range of entities capable of delivering 9–1–1 service? Should reliability standards or certification requirements extend to data centers and other facilities that may in the future be used to host NG9–1–1 components? Are there certain proposals from which non-ILEC service providers should expressly be exempt? To the extent that any of the implementation approaches would impose obligations on entities regulated as common carriers under Title II of the Communications Act, should there be a mechanism for cost recovery beyond the 9–1–1 related tariff mechanisms already in place?

C. Implementation Approaches

7. We seek comment on four possible approaches to implement the recommendations for Commission action in the *Derecho Report.* We seek input on whether each of these approaches can stand alone, or whether the Commission should adopt two or more options as part of an integrated approach (*e.g.,* reporting, certification, performance reliability requirements). As noted above, these proposals are intended to complement, rather than to replace, the Commission's current support for implementation of best practices developed through cooperation with industry and advisory bodies. We also seek comment on the suitability of each of the approaches described below, as well as any other approaches the Commission should consider. However the Commission decides to proceed, a meaningful level of specificity is essential for any approach to be effective. We therefore seek comment on the suitability of existing best practices as a basis for any rules we may adopt. Although each proposal is intended to be flexible, commenters should describe in detail how they propose to implement their preferred approach and how those choices would advance the goals of this *NPRM.*

8. We specifically seek comments from state commissions and PSAPs on the approaches they use to oversee 9–1–1 connectivity. Many states, for example, regulate 9–1–1 service provided by ILECs. Do those states use a reporting approach? Onsite audits? Do PSAPs that contract for 9–1–1 services impose certification or similar requirements upon their 9–1–1 service providers? Do they specify levels of reliability through service level agreements (SLAs) or require adherence to best practices? Are such SLAs negotiated at the PSAP, state, or service-provider level, and what level of 9–1–1 service do they provide? What have state commissions and PSAPs found to work in their oversight of 9–1–1 service providers, and what needs to be improved?

9. *Reporting.* Under this approach, the Commission would require service providers to periodically report on the extent to which they are voluntarily implementing critical best practices, or complying with applicable standards established by the Commission. Would adoption of this reporting approach alone or as part of an integrated approach meet the goal of ensuring 9–1–1 reliability? What costs and benefits would such a reporting obligation create? Which best practices or other standards should be subject to reporting requirements, and are these standards sufficiently detailed to objectively evaluate compliance? To what extent would such a reporting obligation be effective in the absence of a companion requirement to correct deficiencies revealed in the reports? What performance level should the Commission use to prompt remedial actions based on these reports? Commenters offering support for this approach should specify the scope, granularity, and frequency of reporting they support.

10. We note that the Commission has used reporting in the past as a means of ensuring a certain level of reliability in 9–1–1 services. In 2007, in response to Hurricane Katrina, the Commission adopted rules requiring local exchange carriers, wireless service providers subject to 9–1–1 requirements, and interconnected VoIP service providers ''to conduct an analysis of the resiliency and reliability of their 911 networks or systems and to submit a report to the Commission.'' The reports proved of limited use, however, because they lacked the specificity necessary to determine network reliability in individual cases. In light of this experience, we invite commenters to address how to craft a reporting requirement that would more effectively promote reliability of 9–1–1 services and networks and create incentives for service providers to maintain consistently high standards of 9–1–1 reliability.

11. *Certification.* Under this approach, the Commission would require providers to certify periodically that their 9–1–1 network service and

facilities comply with voluntary industry best practices, reliability requirements specified by the Commission or other standards. This approach could help ensure that senior management is aware of significant vulnerabilities in the 9–1–1 network and accountable for its decisions regarding design, maintenance, and disaster preparedness. Are existing best practices sufficiently detailed to serve as standards for certification? What performance level should the Commission use to prompt remedial actions based on these certifications? With respect to this approach, we seek comment on existing certification schemes—whether or not directly related to the work of the Commission—that might serve as models for certification in this context.

12. Do existing Commission certification schemes, such as those used for Consumer Proprietary Network Information or Equal Employment Opportunity; provide an appropriate model for addressing 9–1–1 reliability? Why or why not? What are the tradeoffs among the various models? What costs and benefits would be associated with each? Is there sufficient justification for the Commission to adopt a new certification model? If so, why? Would one possible model be found in Section 302 of the Sarbanes-Oxley Act, which requires Chief Executive Officers (CEOs) and Chief Financial Officers (CFOs) to certify the integrity of financial reports their companies submit to the Securities and Exchange Commission? If so, which portions of certification under Sarbanes-Oxley are suitable for certifications in this context, and are there others that are not suitable? For example, as under Sarbanes-Oxley, should corporate officers be personally liable for the accuracy of their certifications, and how would the Commission enforce such a requirement? What costs and benefits would be associated with this model?

13. *Reliability Requirements.* Under a third approach the Commission would specify minimum standards for 9–1–1 communications reliability, based on recognized industry best practices. How can the Commission ensure that any such requirements account for sound engineering practices not specifically codified as CSRIC best practices, particularly as technologies evolve? Are there differences in the design and operation of particular 9–1–1 networks that the Commission should consider in connection with sound engineering and network reliability standards, and which may not be reflected fully in existing best practices?

14. *Compliance Reviews and Inspections.* Under this approach, the Commission would conduct periodic compliance reviews or site inspections of service provider facilities to verify that 9–1–1 service providers are adhering to certain standards. This approach may be best suited as part of an integrated approach, in conjunction with rules setting minimum standards for compliance. We seek comment on this option, as well as any benefits or costs of this approach. Which service providers should be subject to inspections or compliance reviews, and how often should those inspections occur? Should reviews be limited to records and documentation of compliance with Commission requirements, or should they include physical site inspections of network routes? Would this approach require additional staff, both at the Commission and employed by service providers, to conduct inspections and document compliance? If so, what experience and training would these personnel require, and would they be likely to detect network design and maintenance issues such as those that led to 9–1–1 failures during the derecho?

D. Bureau Recommendations for Improving 9–1–1 Network Reliability

15. As explained above, for each recommendation we seek comment on a range of possible implementation approaches. We also seek comment on the relative costs and benefits of the various proposals. We also seek comment on any alternative proposals that may be more effective or efficient in improving 9–1–1 network reliability or resiliency. In evaluating specific proposals for Commission action, we also seek comment on how we can best work in cooperation with state, tribal, and local governments, which we have recognized are the primary administrators of the legacy 9–1–1 system. For each of the proposals, we specifically seek comments from state commissions and PSAPs on the approaches they use to oversee 9–1–1 connectivity.

1. Routine 9–1–1 Circuit Auditing

16. Many of the vulnerabilities revealed by the derecho hinge on the concept of physical diversity. Under generally accepted definitions, physical diversity means that two circuits follow different paths separated by some physical distance so that a single failure such as a power outage, equipment failure, or cable cut will not result in both circuits failing. For example, two circuits that ride over the same fiber optic cable are not physically diverse, even though they utilize different fibers in that cable and may be logically diverse for purposes of transmitting data. We seek comment on this definition and any other concept of network diversity we should consider.

17. As the *Derecho Report* noted, for example, a physical diversity audit might have revealed vulnerabilities that led to 9–1–1 and ALI service failures to multiple PSAPs in Northern Virginia. To what extent does this experience reflect vulnerabilities in 9–1–1 networks nationwide? Do 9–1–1 service providers perform regular, physical audits—not just logical analyses—of critical circuits to ensure that their networks remain physically diverse? If so, what specifically do they do and how often? What steps are taken to ensure that physical diversity is sustained despite the circuit rearrangements that frequently take place in communications networks?

18. As a result of service providers' inconsistent auditing of 9–1–1 circuits and avoidable single points of failure in their networks, the *Derecho Report* recommended regularly-scheduled auditing of these circuits, noting that it ''should lead to fewer 9–1–1 outages and enhance the reliability of 9–1–1 communications. If providers do not regularly audit the physical routes of 9–1–1 circuits and ALI links, they will be ill-equipped to verify diversity and understand, avoid, or address instances where a single failure causes loss of all E9–1–1 circuits or all ALI links for a PSAP.'' Are there instances where single points of failure are unavoidable, and how should that term be defined? The *Derecho Report* concluded that the benefits of implementing this recommendation will likely outweigh any additional costs, given the large numbers of customers that can be served successfully in emergencies by circuits that are diverse, and the harms that could result from avoidable failures. The Bureau added that any burden likely would be modest because this obligation would apply only to a limited number of high-priority circuits that provide 9–1–1 service.

19. In light of providers' apparent failure to audit circuit diversity adequately, notwithstanding pre-existing best practices bolstered by Bureau reminders, we seek comment in general on the extent to which providers are auditing these circuits and whether those audits follow established best practices. Do existing best practices provide sufficient guidance on this topic? If not, what, specifically, should new or revised best practices address? What remedial actions have 9–1–1 service providers taken based on lessons learned in the derecho, whether or not they were directly affected by the storm?

20. How, when, and to what degree of specificity should network diversity audits be conducted? Under current technologies, critical 9–1–1 circuits include, at a minimum, 9–1–1 trunks to PSAPs and ALI/ANI links, but we seek comment on other transport routes or technologies that may also be vital for emergency response, now or in the future. Although some network characteristics may vary by service provider and location, any auditing obligation must be specifically defined to be effective. Should the Commission therefore adopt rules prescribing in some fashion how audits should be conducted, and should it conduct inspections or compliance reviews to enforce any such rules? How frequently should audits be conducted, and are there existing published industry standards that could serve as a model? Should the Commission require not only that service providers perform audits, but also that they take action to eliminate reasonably avoidable single points of failure? If so, should any single point of failure be considered unavoidable? Should the Commission require that audits be performed by independent experts or conduct periodic compliance reviews or formal inspections as a means of ensuring compliance? Are there complicating factors in performing diversity audits that the Commission should take note of? To what extent do leased circuits affect the ability to perform accurate audits? How would diversity be sustained despite normal circuit rearrangements and grooming?

21. How can the Commission ensure that its guidance regarding transport network diversity remains current as technology changes? For example, in a NG9–1–1 environment, it is likely that at least some crucial servers will be hosted outside of central offices, in either commercial or government data centers. In those cases, should the Commission ask or require such data centers to meet physical diversity standards or certify that they conduct diversity audits? Would it be sufficient if all such servers are backed up by a redundant hot standby server in another data center? Would conformance with the higher tiers of the ANSI/TIA–942 standard be suitable for qualifying data centers to host critical NG9–1–1 components? How does the transition to broadband, IP-based networks affect the ability to conduct accurate audits? Is a reporting requirement the best approach for ensuring that providers perform 9–1–1 audits?

22. We also seek comment on whether reports should be made publicly available. Should they be treated as confidential, absent a persuasive contrary showing, as with outage reports? Do commenters believe any such reports should be shared within the PSAP community, or made accessible to 9–1–1 industry associations (*e.g.,* APCO, NENA)? Should the reports be shared with state regulators such as state public utilities commissions?

23. We also seek comment on whether providers should certify that they are performing 9–1–1 circuit audits in conformance with best practices, and if so, how often they should so certify. If the Commission were to pursue the certification approach, to which standards should providers be required to certify? Do existing standards or guidance serve as a usable template? Beyond certifying that they have conducted an audit, what other information should service providers need to certify? For example, should they conduct audits under generally-accepted procedures reflected in best practices? Should providers certify that the circuits audited satisfied specified criteria for physical diversity and identify and describe exceptions in some fashion? How often should providers be required to file any such certifications, and how granular should they be? Should any certification requirement be accompanied by an obligation to correct deficiencies revealed by diversity audits?

24. We also seek input regarding additional costs, if any, that would accrue to providers in implementing requirements associated with this recommendation through any of the approaches noted above (*i.e.,* reporting, certification, performance requirements). The NPRM provides preliminary cost and benefit estimates and seeks comment on all aspects of and assumptions underlying the cost/benefit analysis.

2. Sufficient Backup Power at Central Offices

25. The derecho raised many questions regarding backup power, including whether all central offices must have some form of backup power, and what constitutes adequate backup power. During the derecho, approximately 7 percent of one affected service provider's central-office generators failed to operate properly when needed. To what extent is this failure rate representative of central-office backup power nationwide among all 9–1–1 service providers? What rate of generator or other backup power failures have service providers experienced during other recent power failures?

26. In light of these concerns, we seek comment on whether the Commission should institute requirements with respect to backup power, including testing and maintenance of backup power equipment. How closely do providers adhere to existing industry best practices and other published guidelines on backup power? Would new or expanded best practices provide additional guidance necessary to help maintain reliable backup power? If so, would additional best practices provide as much assurance of rigorous compliance as any of the approaches proposed here? What additional best practices are needed in this area? How closely do providers follow generator and battery manufacturers' recommended maintenance schedules? We also are interested in comment regarding backup power test records, *e.g.,* what types of records are actually maintained, and the general content of those records. How long are records retained, and are they shared effectively within the service provider's organization? As records could not always be readily located, does this suggest that FCC monitoring would be helpful? If a battery or generator fails a routine test, is that information communicated to management and reliably acted upon in a timely manner?

27. If we conclude that the Commission should establish backup power requirements, what, more precisely, should be required? Acknowledging that what constitutes a ''central office'' can vary to some extent by service provider and location, we ask commenters to give views on whether and how an adequate level of backup power may differ based on the type of facility. Should the required level of backup power depend on the relationship of each central office to reliable 9–1–1 service? Furthermore, the forecast transition to NG9–1–1 will likely allow some capabilities to be hosted outside of central offices in consolidated data centers. We seek comment on the level of backup power currently available at such facilities and the degree to which they should be required to comply with backup power standards for 9–1–1 networks.

28. Should the Commission require service providers to file reports describing their central office backup power schemes, including maintenance and testing? If so, how often should providers have to file such reports? Should reports be based on conformance with specific best practices, or other standards adopted by the Commission? How many reports would there be? We also ask what specific information should be included

in these reports, *e.g.,* should the report be limited to factual discussion of existing practices, or should providers also report on any planned improvements? Should the report explicitly note departures from industry best practices? Should the reports include an inventory of backup power deployment in service provider central offices? Should providers report on the results of recent tests and their protocol for addressing needed repairs? Should the reports be made publicly available? Would a requirement help foster the sustained focus needed to make a difference?

29. We also seek comment on the approach of having 9–1–1 service providers periodically certify that their central offices have sufficient backup power or conform with specific best practices. With this approach, to what standard(s) should providers certify? What existing industry backup power standards or guidance might serve as a usable template? Beyond certifying that their backup power meets minimum standards, what other factors might service providers be required to certify to? How often should providers be required to file any such certifications, and how granular should they be? Who, by title, should attest to the validity of the certification?

30. We seek comment on whether we should adopt a minimum standard for central office backup power. Should the Commission require on-site backup power for a specific number of hours, whether through appropriately rated batteries or a backup generator with a sufficient fuel supply? Should we require that service providers maintain sufficient backup power to ensure continuity of critical communications and, if so, how should ''critical communications'' be defined? Should the Commission require service providers to have in place and implement plans for regular maintenance and testing of backup power equipment? If so, should the Commission specify a level of detail and granularity for those plans? Would periodic site inspections or compliance reviews be useful to ensure compliance? Do service providers currently test backup generators under actual office load, and is that method preferable to or more effective than others? How often do service providers employ tandem generator arrangements where the failure of one generator would result in a central office being switched immediately to battery backup? Should these generators be replaced or redesigned to shed nonessential loads? We seek comments on the benefits and drawbacks of each implementation approach, and compared to each other.

31. We also seek input regarding additional costs, if any, that would accrue to providers who are not already rigorously implementing best practices, and to all providers to either report or certify. The cost associated with reporting and certification appears to be a fraction of the cost required to remediate deficiencies that these approaches reveal. However, the very preliminary information obtained by the Bureau so far suggests that remediation may not be necessary for a substantial majority of central offices that already have permanent generators and readily accessible portable generators; do not use tandem generator arrangements, where the failure of one generator results in neither generator functioning; and already have implemented appropriate battery and generator testing. We seek more specific information about the prevalence of each of these situations below, and on the estimated time and cost associated with remediation where necessary. Is the range of potential remediation costs wide enough to raise questions about whether the costs of remediation may exceed the benefits?

32. We have identified a number of questions involving potential costs that appear relevant to this inquiry. How many central offices have a generator onsite? A portable generator that can be deployed promptly (*e.g.,* within four hours)? What is the fully loaded cost of such a portable generator? How many central offices have batteries that are not tested to the manufacturer's specifications? How long does it take on average to test such batteries over the course of a year? What is the cost of doing so? Similarly, how many onsite generators are not tested monthly or yearly, and what would the associated incremental costs of such testing be? What is the likelihood of a generator's failing a monthly or annual maintenance test, and the associated cost of repairing it? How many tandem generator arrangements are there, in which the failure of one results in neither functioning? How much is already budgeted to address problems associated with the potential need to address these issues? The NPRM provides a preliminary analysis of and seeks comment on all aspects of and assumptions underlying the costs and benefits of: (1) Having generators available in all central offices; (2) more regular battery testing; (3) more regular generator testing; (4) repairing a generator soon after it fails a test; (5) eliminating a tandem generator arrangement where the failure of one generator results in neither generator functioning; (6). The NPRM seeks comment on all aspects of and assumptions underlying the cost/benefit analysis

3. Robust Network Monitoring Capabilities

33. A 9–1–1 service provider typically operates one or more Network Operations Centers (NOCs) from which it performs, among other tasks, remote monitoring of its network. This monitoring enables a provider to detect critical facilities outages and other problems as soon as they occur and to deploy resources as appropriate to rectify problems. These NOCs typically communicate with the network elements that they monitor by first connecting with one or more regional aggregation points, which then connect to the array of network elements to be monitored. The diversity of these regional aggregation points, including the diversity of the facilities that connect them to NOCs, is vital to communications reliability. During the derecho, the network monitoring capabilities of the two primary ILECs involved were disabled within the area of the storm, depriving them of visibility into the status of their network operations and complicating their recovery efforts. In both instances, the loss of monitoring capability throughout the segment of the network affected by the storm could be attributed to a single point of failure. To what extent do these failures reflect vulnerabilities in network monitoring systems nationwide? How often do other 9–1–1 service providers rely on a single physical path to monitor large portions of their networks, and why have redundant links not been installed?

34. Based on network monitoring failures during the derecho, the Bureau recommended that the Commission take action to ensure that 9–1–1 service providers put in place ''diverse monitor and control links and capabilities throughout their network[s].'' We seek comment on whether and how to implement this recommendation. What have 9–1–1 service providers affected by the derecho done to ensure they will not lose visibility into their networks during future emergencies? To what extent have other 9–1–1 service providers implemented diverse monitoring capabilities within their networks, and do they plan specific, additional improvements in response to the derecho? How can the Commission be confident that these measures will be sustained?

35. Should the Commission pursue the *Derecho Report's* recommendations

with respect to network monitoring, how should it specify the level or degree of ''diversity'' expected of network monitoring and control capabilities? For example, should the Commission define this ''diversity'' such that the failure of one element of a service provider's monitoring system, for example the failure of a control link, cannot result in the loss of network monitoring capabilities? If this definition is not suitable, what would a suitable alternative be and why is it superior? We observe that, unlike other policy objectives the Bureau recommends, diversity in network monitoring is not the subject of a specific CSRIC best practice, although other best practices address circuit diversity and network monitoring in general. Are new or more specific best practices needed to provide guidance in this area? If so, what new or revised best practices are needed? Would additional best practices provide as much assurance of rigorous compliance as any of the approaches proposed here? Who should be charged with developing these best practices? At a minimum, the derecho revealed that it is a sound engineering practice to design network monitoring centers with visibility into the network through physically diverse links that help to avoid single points of failure. Where are these concepts addressed in industry best practices or other published guidelines? How will the transition to NG9–1–1 affect network monitoring technologies and the need for diverse monitoring links?

36. Should the Commission require service providers to file reports describing the diversity of their network monitoring capabilities? If so, how often should such reports be filed, and how granular should they be? What specific information should be included in these reports? For example, should the reports include detailed descriptions of service provider monitoring and control architectures, including maps? What are the public safety and homeland security implications of public disclosure of key network routes? Should such reporting be limited to factual discussion of existing practices, or should providers also report on any planned or ongoing efforts to improve the diversity of their network monitoring capabilities?

37. We also seek comment on the approach of having providers certify that their monitoring and control links are sufficiently diverse. With this approach, to what diversity standard should providers certify? For example, should service providers certify that no single points of failure exist in the network monitoring facilities that run between their NOCs and regional aggregation points? Beyond certifying that their monitoring links are sufficiently diverse, what other information should providers be required to certify? For example, should service providers be asked to certify that they have more than one regional aggregation point in major metropolitan areas? How often should providers be required to file any such certifications, and how granular should they be? How could existing certification schemes, such as section 302 of SOX, serve as models for such certification?

38. Should the Commission require service providers to implement a certain level of diversity in their network monitoring and control capabilities? If so, how precisely should the Commission specify the level or degree of ''diversity'' required of network monitoring and control links? Should the Commission avail itself of compliance reviews or formal inspections as a further means of ensuring compliance with any such rule it adopts?

39. The NPRM includes an analysis of the costs and benefits associated with ensuring more diversity in monitoring capabilities and seek comment on all aspects of and assumptions underlying that analysis.

E. Improved PSAP Notification Under Section 4.9 of the Commission's Rules

40. The derecho also demonstrated that timely, clear, and appropriately targeted communication between 9–1–1 service providers and PSAPs is key during any disruption of 9–1–1 service, particularly in a disaster when the public requires additional emergency assistance. The Commission's current rules recognize that PSAPs must be notified when communications outages affect 9–1–1 service, but the derecho revealed that many PSAPs' efforts to restore service and respond to emergencies during the derecho were hindered by inadequate information and otherwise ineffective communication by service providers. Although we recognize that conditions often change rapidly in disaster situations, PSAPs—and ultimately the public—depend on communications providers for accurate situational awareness when outages affect public safety. We therefore propose amendments to § 4.9 of the Commission's rules to clarify how service providers can more effectively and uniformly notify PSAPs of outages affecting 9–1–1 service and cooperate to restore service as quickly as possible.

41. Section 4.9 requires certain communications providers to notify the Commission within 120 minutes of discovering a reportable outage. The rule also requires specified providers to notify ''9–1–1 special facilities''—*i.e.,* PSAPs—affected by an outage with ''all available information that may be useful'' to mitigate the outage ''as soon as possible by telephone or other electronic means.'' After the derecho, however, many PSAPs reported that they were not notified of outages or received inadequate information about the scope of impacts to 9–1–1 service. The lack of specificity in this rule has led to questions regarding how to determine whether or how providers are complying with the Commission's PSAP notification requirements.

42. During the Bureau's derecho inquiry, multiple PSAPs stated that they contacted their 9–1–1 service provider to report a loss of service before being contacted by the provider. Other PSAPs received notification in the form of ''cryptic'' emails that referenced problems in one central office but did not specify all of the jurisdictions affected. Furthermore, inadequate information from service providers during the derecho led some PSAPs to activate ineffective reroutes, or to attempt to reroute even though service could have been restored via the original route.

43. We therefore propose revisions to § 4.9 intended to clarify 9–1–1 service providers' outage reporting obligations and better ensure that PSAPs receive timely and actionable notification when a communications outage affects 9–1–1 service. Under the proposed rules, service providers subject to PSAP notification requirements would be required to notify PSAPs of outages immediately, by telephone and in writing via electronic means. These notifications would include, at a minimum, the nature of the outage, the estimated number of users affected or potentially affected, the location of those users, the actions being taken by provider to address the outage, the estimated time at which service will be restored, recommended actions the impacted facility should take to minimize disruption of service, and the sender's name, telephone number and email address at which the sender can be reached.

44. We seek comment on this proposed language and any alternative revisions to § 4.9 that would accomplish the goal of clarifying reporting obligations and ensuring that PSAPs receive more detailed outage notifications. To what extent do providers currently inform PSAPs of 9–1–1 outages, and what is included in those communications? What additional information would PSAPs find useful? How much information that would be

helpful to PSAPs is practically available to service providers during natural disasters and other emergencies? Under the proposed rule, service providers would be required to provide PSAP notification immediately. Should the Commission adopt a more specific timeframe by when service providers must notify PSAPs? If so, what would be an appropriate timeframe? Should the Commission specify a list of acceptable ''electronic means'' for written notifications, or do PSAPs and service providers prefer flexibility to choose their own methods of communication? Should service providers be required to keep and retain records of their communications with PSAPs to demonstrate compliance with notification requirements? To what extent do state tariffs and other state and local regulations impose requirements regarding outage reporting and communication in general between service providers and PSAPs?

45. We note that the current outage reporting rules apply to a range of service providers beyond the ILECs that typically route 9–1–1 calls to PSAPs under current network configurations. Should any new or revised PSAP notification requirements apply to all entities covered by § 4.9, or only those considered ''9–1–1 service providers'' for purposes of this *NPRM*? Should amended notification requirements apply to additional service providers who are not already covered by § 4.9? Because our intent is to clarify the current rule and promote efficient communication between service providers and PSAPs, we begin with the assumption that revisions would be most effective if applied consistently to all providers covered by the current rule. We invite comment on that view, however, and seek input on the range of entities that should be subject to revised PSAP notification requirements.

46. In light of the anticipated evolution toward NG9–1–1, we also seek comment on whether entities such as data centers and centralized call centers that do not fit the traditional definition of PSAPs should also be notified of communications outages. For example, how would the outage-reporting rules apply to consolidated call centers that may not be physically located in the affected area but still serve many of the functions of a traditional local PSAP? As technologies evolve, is there a better way to approach PSAP notification than the current rubric of direct communication from service provider staff to PSAP staff? For example, are there automated technologies such as machine-readable data feeds that could transmit outage information to PSAPs in a standardized format?

47. Because service providers must already notify PSAPs of outages under current rules, we do not expect any incremental costs resulting from a clarification of that obligation. We do, however, seek comment on the costs and benefits of particular notification requirements, as well as the burden each approach would place on providers and PSAPs.

III. Other Matters

A. Legal Authority

48. The *NPRM* includes a discussion of the Commission's legal authority for the prospective actions discussed above to promote the reliability and resiliency of communications infrastructure that is essential for 9–1–1 service and seeks comment on that analysis.

B. Small Entities

49. The Commission seeks comment on the degree to which the rules proposed in this *NPRM* would affect small businesses.

C. Circumstances Beyond Providers' Control

50. The Commission seeks comment on the extent to which any action it takes in this area should account for circumstances beyond the control of the provider. What are the specific laws, regulations, and other challenges that would interfere with compliance with these requirements, and how prevalent are these challenges in specific localities? If cost should be considered, what are the appropriate criteria for deciding when a cost is truly prohibitive rather than merely inconvenient? Is the Commission's authority to suspend, revoke, amend, or waive its rules for good cause sufficient to ensure consideration of these factors, or should there be explicit exemptions in the rules themselves? If we determine that a particular state, local, or tribal law, regulation, or practice affirmatively impedes the deployment of effective 9–1–1 services to PSAPs or the deployment of NG9–1–1 services, would the Commission have authority to preempt that law, regulation, or practice? If so, under what circumstances should we exercise that authority?

D. Review and Sunset

51. We also seek comment on whether the Commission should conduct a periodic review of any rules or other requirements that it adopts to ensure that those actions provide flexibility and take into account the continuing advancement of technology. If so, how often should such reviews occur, and how should the ongoing utility of each proposal be measured? Alternatively, we seek comment on whether the Commission should establish a sunset date on which any of the proposals would cease to apply. How should that date be determined, and should it be tied to a specific triggering event, *e.g.,* demonstrated improvements in network reliability or the widespread adoption of NG9–1–1? Should any of these proposals sunset for individual service providers once they deploy NG9–1–1? Because certain approaches may entail upfront costs that decrease over time, what effect should the cost of compliance have on a potential sunset date? Should sunset occur automatically without additional Commission action, or should the Commission consider a possible sunset after further review? How else might the Commission ensure that any action it takes remains current and technologically appropriate over time?

E. Procedural Matters

1. Regulatory Flexibility Act

52. An Initial Regulatory Flexibility Analysis (IRFA) for this *NPRM* is located under section titled *Initial Regulatory Flexibility Analysis.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* indicated above.

2. Paperwork Reduction Act of 1995

53. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

3. Ex Parte Rules

54. The proceeding of which this Notice is a part is a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation

within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

4. Comment Filing Procedures

55. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments should be filed in PS Docket No. 13–75. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

1. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

2. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

3. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Confidential Materials: Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in § 0.459 of the Commission's rules. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary's Office following the procedures set forth in 47 CFR 0.459. Redacted versions of confidential submissions may be filed via ECFS.

Initial Paperwork Reduction Act Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 11, 2013.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this IRFA of the possible significant economic impact on a substantial number of small entities by the recommendations in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in ''Comment Period and Procedures'' of this *NPRM.* The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

2. The June 2012 Derecho storm revealed serious vulnerabilities in the Nation's 9–1–1 communications infrastructure that could have been prevented or mitigated through the implementation of best practices developed by industry and advisory bodies. Yet, the Bureau's inquiry into communications failures during and after the storm found that multiple 9–1–1 service providers failed to implement best practices related to physical circuit diversity, central office backup power, and network monitoring, leading to emergency communications outages affecting millions of Americans. In some cases, PSAPs did not receive timely or adequate notification of these outages, compounding the difficulty of providing emergency assistance until service was restored. A broad range of comments from state and local governments, as well as public safety entities themselves, support the Bureau's finding that such failures are unacceptable. As part of its statutory obligation to ensure that communications networks of all types ''promot[e] safety of life and property,''

the Commission has a particular responsibility to promote reliable emergency communications and prevent avoidable failures.

3. With the objective of ensuring reliability and resiliency of 9–1–1 networks and services, the *NPRM* proposes to:

- Ensure that 9–1–1 service providers conduct routine circuit audits to verify physical diversity and identify avoidable single points of failure. The *NPRM* seeks comment of the details of this obligation and the extent to which providers would be required to fortify non-diverse circuits.
- Ensure that 9–1–1 service providers maintain adequate backup power in central offices, supported by appropriate testing, maintenance, and records retention. The *NPRM* seeks comment on what level of backup power should be considered adequate and whether current maintenance and recordkeeping practices are sufficient to ensure reliability.
- Ensure that 9–1–1 service providers maintain robust and resilient network monitoring capabilities, supported by diverse network monitoring and control links. The *NPRM* seeks comment on the degree of diversity and specific engineering practices necessary to protect network monitoring capabilities against single points of failure.

4. The *NPRM* proposes a range of approaches by which the above objectives could be accomplished. For instance, 9–1–1 service providers could be required to report whether they have implemented relevant best practices, or a company representative could be required to certify compliance with best practices on a regular basis. The Commission could also codify key best practices in its rules, such as a minimum level of physical diversity for 9–1–1 circuits. Under the latter approach, the Commission could also ensure compliance though periodic site inspections and compliance reviews. As the *NPRM* notes, these alternatives need not be mutually exclusive and are intended as a starting point for discussion of which approach(es) will yield the greatest benefit in communications reliability at the lowest cost to service providers.

5. The *NPRM* also proposes revisions to § 4.9 of the Commission's rules to state with greater specificity how and when 9–1–1 service providers must notify PSAPs affected by communications outages. As noted in the *Derecho Report,* the current rule has led to questions regarding whether providers are complying fully with the Commission's PSAP notification requirements, and whether the current requirements provide PSAPs with actionable information. Clarification of these standards could increase compliance by service providers and improve situational awareness for PSAPs affected by outages.

6. The Commission traditionally has addressed communications reliability issues by working with service providers to develop voluntary best practices that address vulnerabilities in the communications network, and by measuring the effectiveness of those best practices through outage reporting. Under the Commission's current rules, the outage reporting process has often been effective in improving the reliability, resiliency, and security of many communications services. The June 2012 derecho, however, revealed the need to supplement this approach with regard to critical 9–1–1 communications. While the *NPRM* supports the development of additional best practices, it recognizes that additional Commission action may be appropriate. Thus, the proposed approach would complement, rather than replace, the existing regime of best practices and outage reporting.

B. Legal Basis

7. The legal basis for the rules and rule changes proposed in this *NPRM* are contained in Sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c. The Commission also believes it has ancillary authority under Title I of the Communications Act to impose the requirements discussed in the *NPRM* on any 9–1–1 service providers not subject to express regulatory authority under Title II. Any such regulations would be ''reasonably ancillary'' to the goal of ensuring a common baseline for the reliability of 9–1–1 service on a nationwide basis, regardless of the regulatory status of the entity providing the service.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

8. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

1. Total Small Entities

9. Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

2. Entities Subject to NPRM

10. As noted in the *NPRM,* we seek comment on the class of entities to which the proposals would apply. Generally, we expect Commission action to focus narrowly on entities that provide key facilities for 9–1–1 service rather than the broader class of all communications services capable of placing 9–1–1 calls. Like the *Derecho Report,* the *NPRM* defines ''9–1–1 service provider'' as a communications provider ''responsible for routing and delivering 9–1–1 calls to PSAPs.'' Under current technologies, these providers are typically ILECs, although the transition to NG9–1–1 may broaden the class of entities that provide 9–1–1 service in the future. The *NPRM* therefore asks whether the Commission should codify a definition of the term ''9–1–1 service provider'' that clarifies the extent, if any, to which the proposals would apply to non-ILEC providers of 9–1–1 service.

11. We anticipate that the proposals in this Notice would apply to all 9–1–

1 service providers, and tentatively define that term to include all entities, including ILECs, that provide 9–1–1 call routing, ALI, emergency services Internet protocol networks (ESInets), and similar services directly to a PSAP. The transition to NG9–1–1 may allow other service providers to perform similar functions, and we seek comment on the degree to which the proposals should apply to other types of wireline service providers, wireless service providers, interconnected VoIP service providers, or other potential means of reaching a PSAP as NG9–1–1 broadens the range of entities capable of delivering 9–1–1 service. We also seek comment on whether there should be a cost-recovery mechanism for entities regulated as common carriers under Title II of the Communications Act to the extent not already provided under state tariffs.

12. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.

13. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. The actions proposed in the *NPRM* could require 9–1–1 service providers to take a range of actions to strengthen the Nation's 9–1–1 infrastructure in the areas of circuit diversity, central office backup power, and network monitoring and control. Specific regulatory obligations would depend upon the approach chosen to implement each of these objectives. Requirements for compliance could range from periodic reporting on whether 9–1–1 service providers are voluntarily implementing best practices, to mandatory standards for 9–1–1 network reliability codified in the Commission's rules and subject to its enforcement powers. Service providers also could be required to periodically certify that they have adequate internal controls to ensure network reliability and inform senior management of any significant vulnerabilities. Because many 9–1–1 service providers already implement some or all of the relevant best practices on a voluntary basis, the additional burden of compliance with these requirements may be minimal.

15. Generally, the reporting and certification approaches would likely require more recordkeeping and information collection than the codification-and-enforcement approach, which would focus on the actual implementation of best practices. However, reporting and certification may give service providers more flexibility in designing and maintaining their networks while ensuring that they remain accountable for the results of their decisions. At a minimum, 9–1–1 service providers would be required to keep records of, and disclose to the Commission, the extent to which they have implemented the best practices discussed in the *NPRM.* At a maximum, they would be required to comply with reliability standards enforced by the Commission, potentially requiring changes to networks that do not currently meet these standards.

16. The *NPRM* also proposes revisions to § 4.9 of the Commission's rules to clarify service providers' obligations to notify PSAPs of 9–1–1 outages. The *NPRM* seeks comment on this objective, as well as on the substantive terms of the reporting obligation.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

18. The approaches proposed in the *NPRM* are intended to complement and strengthen, not to replace, the Commission's current approach of encouraging service providers to voluntarily implement best practices and measuring compliance through outage reporting. Thus, small entities with limited resources would continue to enjoy many of the benefits of the current regime, including a general focus on network performance and reliability rather than specific design requirements. The Commission has traditionally considered this approach a more flexible and less costly alternative to more comprehensive regulation, and the *NPRM* would preserve those advantages in large part.

19. To the extent that the *NPRM* would impose new obligations on small entities, we seek comment on alternatives including (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. Which of the proposed approaches do small entities find particularly difficult or costly to comply with, and how could those difficulties be addressed through modifications or exemptions? What would be the effect on public safety of exemptions from 9–1–1 service requirements, regardless of cost?

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

IV. Ordering Clauses

20. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking,

including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

21. Accordingly, *it is ordered* pursuant to sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c, that this Notice of Proposed Rulemaking in PS Docket No. 13–75 and PS Docket No. 11–60 *is adopted.*

List of Subjects in 47 CFR Part 4

Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed rules

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 4 as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

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

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 154, 155, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b).

■ 2. Section 4.9 is amended by revising paragraphs (a)(4), (c)(2)(iv), (e)(5), (f)(4), and (g)(1)(i) to read as follows:

§ 4.9 Outage reporting requirements—threshold criteria.

(a) * * *

(4) Potentially affects a 911 special facility (as defined in paragraph (e) of § 4.5), in which case they also shall notify immediately by telephone and in writing via electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person(s) for communications outages at that facility, and they shall convey all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility. This information shall include, at a minimum, the nature of the outage, the estimated number of users affected or potentially affected, the location of those users, the actions being taken by provider to address the outage, the estimated time at which service will be restored, recommended actions the impacted 911 special facility should take to minimize disruption of service, and the sender's name, telephone number and email address at which the sender can be reached. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

* * * * *

(c) * * *

(2) * * *

(iv) Potentially affecting a 911 special facility (as defined in paragraph (e) of § 4.5), in which case they also shall notify immediately by telephone and in writing via electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person(s) for communications outages at that facility, and they shall convey all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility. This information shall include, at a minimum, the nature of the outage, the estimated number of users affected or potentially affected, the location of those users, the actions being taken by provider to address the outage, the estimated time at which service will be restored, recommended actions the impacted 911 special facility should take to minimize disruption of service, and the sender's name, telephone number and email address at which the sender can be reached.

* * * * *

(e) * * *

(5) That potentially affects a 911 special facility (as defined in paragraph (e) of § 4.5), in which case they also shall notify immediately by telephone and in writing via electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person(s) for communications outages at that facility, and they shall convey all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility. This information shall include, at a minimum, the nature of the outage, the estimated number of users affected or potentially affected, the location of those users, the actions being taken by provider to address the outage, the estimated time at which service will be restored, recommended actions the impacted 911 special facility should take to minimize disruption of service, and the sender's name, telephone number and email address at which the sender can be reached. In determining the number of users potentially affected by a failure of a switch, a concentration ratio of 8 shall be applied. For providers of paging service solely, however, the following outage criteria shall apply instead of those in paragraphs (b)(1) through (b)(3) of this section. Notification must be submitted if the failure of a switch for at least 30 minutes duration potentially affects at least 900,000 user-minutes. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

* * * * *

(f) * * *

(4) Potentially affects a 911 special facility (as defined in paragraph (e) of § 4.5), in which case they also shall notify immediately by telephone and in writing via electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person(s) for communications outages at that facility, and they shall convey all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility. This information shall include, at a minimum, the nature of the outage, the estimated number of users affected or potentially affected, the location of those users, the actions being taken by provider to address the outage, the estimated time at which service will be restored, recommended actions the impacted 911 special facility should take to minimize disruption of service, and the sender's name, telephone number and email address at which the sender can be reached. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

* * * * *

(g) * * *

(1) * * *

(i) Within 240 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that potentially affects a 911 special facility (as defined in paragraph (e) of § 4.5), in which case they also shall notify immediately by telephone and in writing via electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person(s) for communications outages at that facility, and the provider shall convey all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on efforts to communicate with that facility. This information shall include, at a minimum, the nature of the outage, the estimated number of users affected or potentially affected, the location of those users, the actions being taken by provider to address the outage, the estimated time at which service will be restored, recommended actions the impacted 911 special facility should take to minimize the disruption of service, and the sender's name, telephone number and email address at which the sender can be reached; or

* * * * *

[FR Doc. 2013–08525 Filed 4–11–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 13–39; FCC 13–18]

Rural Call Completion

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission proposes to adopt rules requiring facilities-based originating long distance providers to record and retain data on call completion rates to rural areas, and to report this data to the Commission on a quarterly basis. We propose to reduce or eliminate a provider's retention and reporting obligations if that provider certifies that it qualifies for one of two proposed safe harbor provisions. We also propose to prohibit both originating and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted. These changes will allow the Commission to more effectively determine the causes of call completion problems to rural areas and take action to cure them, and will also prevent consumer confusion caused by the injection of false ringtones before the called party has been alerted.

DATES: Submit comments on or before May 13, 2013.

Submit reply comments on or before May 28, 2013.

Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before June 11, 2013.

ADDRESSES: You may submit comments, identified by WC Docket No. 13–39, by any of the following methods:

▪ *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Steven Rowings, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1033 or by email at *steven.rowings@fcc.gov.* To submit Paperwork Reduction Act (PRA) comments, send an email to *PRA@fcc.gov.* For further information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

▪ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 11, 2013.

PRA comments should address whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–XXXX.

Title: Rural Call Completion Recordkeeping and Reporting.

Form No.: Not applicable.

Type of Review: New Collection.

Respondents: Business or other for-profit; not-for-profit institutions; and State, Local or Tribal governments.

Number of Respondents and Responses: 90 respondents, 360 annual responses.

Estimated Time per Response: 16 hours.

Frequency of Response: Quarterly reporting requirement and recordkeeping requirement.

Obligation To Respond: Mandatory. Statutory authority is contained in sections 1, 2, 4(i), 201, 202, 218, 220(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 202, 218, 220(a), and 403.

Total Annual Burden: 5,760 hours.

Total Annual Costs: $393,750.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission gives no assurances that information submitted in response to these proposed rules will be treated as confidential. Any information provided by parties to comply with these proposed rules may be submitted pursuant to a request for confidentiality under § 0.459 of the Commission's rules. *See* 47 CFR 0.459.

Needs and Uses: These proposed rules would require facilities-based originating long-distance voice service providers to collect data on call answer rates, and to report those data to the Commission on a quarterly basis. The information obtained through this collection will allow the Commission to monitor the performance of long-distance telephone service providers in order to more fully investigate the disparity in performance levels between long-distance calls to rural areas and those to nonrural areas, as well as to ensure that long-distance providers are complying with their statutory obligations to provide just, reasonable, and nondiscriminatory service throughout the nation.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) or to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Synopsis of Notice of Proposed Rulemaking

In this Notice of Proposed Rulemaking (NPRM), we seek comment on rules to help address problems in the completion of long-distance telephone calls to rural customers.

I. Introduction

1. Retail long-distance providers, such as wireless providers, cable companies, interexchange carriers (IXCs), local exchange carriers (LECs), and providers of Voice over Internet Protocol (VoIP) services, often employ intermediate providers to carry long-distance calls to their destination. Some of these intermediate providers offering wholesale call delivery services may be failing to deliver a significant number of calls to rural telephone company customers, and evidence indicates that the retail long-distance providers may not be adequately examining the resultant rural call completion performance.

2. Completion rates of long-distance calls to rural telephone company service areas are frequently poor, even where overall performance of the intermediate provider appears acceptable. The problems manifest themselves in lengthy periods of dead air on the calling party's end after dialing a number, audible ringing tones on the calling party's end when the called party's telephone never rings at all, false busy signals, inaccurate intercept messages, and the inability of one or both parties to hear the other when the call does go through. This causes rural businesses to lose customers, cuts families off from their relatives in rural areas, and creates potential for dangerous delays in public safety communications in rural areas.

3. In this proceeding, we will consider measures to improve the Commission's ability to monitor the delivery of long-distance calls to rural areas and aid enforcement action in connection with providers' call-completion practices as necessary. We seek comment on reporting and data retention requirements that would allow the Commission to review a long distance provider's call performance to specific areas. These measures would strengthen the Commission's ability to ensure a reasonable and nondiscriminatory level of service to rural areas. We also seek comment on how to minimize the burden of compliance with these proposed rules, particularly for originating providers whose call-routing practices do not appear to cause significant call-completion problems.

II. Background

4. In filings with the Commission and in presentations at the Commission's October 18, 2011 workshop on rural call routing and termination problems, several entities identified a number of rural call completion issues and asked the Commission to address them promptly. Trade associations that represent rate-of-return carriers (collectively, ''rural associations'') and several state utility commissions describe the call-termination issues affecting rural areas as serious and widespread. They emphasize that the inability of businesses, consumers, and government officials to receive calls compromises the integrity and reliability of the public switched telephone network (PSTN) and threatens the public safety, homeland security, consumer welfare, and economic well-being of rural America. These entities claim that call-termination problems continue to increase and that the result is the ''effective disconnection of rural consumers from many other parts of the PSTN.''

5. As evidence of the problem, rural associations report that rate-of-return carriers serving rural areas are reporting an alarming increase in complaints from their customers stating that long-distance calls and faxes are not reaching them or that call quality is poor. Indeed, these rural associations state that 80 percent of rural carriers responding to one survey reported problems, and rural customer reports of problems receiving calls increased by more than 2000 percent in the twelve-month period from April 2010 to March 2011. In May 2012, the rural associations conducted a second call-completion study based on over 7400 call attempts and reported that, while there was some improvement in rural areas from 2011 to 2012, the incompletion rate in rural areas was still 13 times higher in rural areas than in nonrural areas. In November 2012, a third survey of rural carriers indicated that the problems with completing calls to rural areas were continuing at an alarming rate.

6. Call completion problems appear to occur particularly in rural areas served by rate-of-return carriers, where the costs that long-distance providers incur to complete calls are generally higher than in nonrural areas. To minimize call termination charges, long-distance providers often use intermediate providers that offer to deliver calls to specified terminating providers at comparatively low cost, usually within

defined service quality parameters. Rural associations suggest that the call-completion problems may arise from the manner in which originating providers set up the signaling and routing of their calls, and that many of these call routing and termination problems can be attributed to intermediate providers.

7. *Previous Commission Actions.* The Commission has stated that carriers are prohibited from blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges. Noting that the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the explicit goals of the Act, the Wireline Competition Bureau (Bureau) issued a declaratory ruling in 2007 to clarify that no carriers, including interexchange carriers, may block, choke, reduce, or restrict traffic in any way.

8. In September 2011, the Commission created the Rural Call Completion Task Force to address and investigate the growing problems associated with calls to rural customers. On October 18, 2011, the Task Force held a workshop to identify specific causes of the problem and discuss potential solutions with key stakeholders.

9. In its November 2011 Order reforming intercarrier compensation and the Universal Service Fund, the Commission again emphasized its longstanding prohibition on call blocking. The Commission reiterated that call blocking has the potential to degrade the reliability of the nation's telecommunications network and that call blocking harms consumers. The Commission also made clear that the general prohibition on call blocking by carriers applies to VoIP–PSTN traffic. Finally, the Commission prohibited call blocking by providers of interconnected VoIP services and providers of ''one-way'' VoIP services.

10. In February 2012, the Wireline Competition Bureau issued a declaratory ruling to clarify the scope of the Commission's prohibition on blocking, choking, reducing, or restricting telephone traffic in response to continued complaints about rural call completion issues from rural associations, state utility commissions, and consumers. The *2012 Declaratory Ruling* made clear that rural call routing practices that lead to call termination and quality problems may violate the prohibition against unjust and unreasonable practices in section 201 of the Communications Act of 1934, as amended (the Act) or may violate the carriers' section 202 duty to refrain from unjust or unreasonable discrimination in practices, facilities, or services. The *2012 Declaratory Ruling* also noted that carriers may be subject to liability under section 217 of the Act for the actions of their agents or other persons acting for or employed by the carriers. The Bureau stated that the practices causing rural call completion problems ''adversely affect the ubiquity and reliability of the nation's telecommunications network and threaten commerce, public safety, and the ability of consumers, businesses, and public health and safety officials in rural America to access and use a reliable network.''

11. In addition to conducting ongoing investigations of several long-distance providers, the Commission has also been addressing daily operational problems reported by rural customers and carriers so that incoming long-distance calling to rural telephone company customers is promptly restored. We have established dedicated avenues for rural customers and carriers to inform the Commission about these call completion problems. A web-based complaint intake focuses on the rural call completion problems of residential and business customers, instructs them on how to file complaints with the Commission, and links to the Commission's standard 2000B complaint form. A dedicated email intake expedites the ability of rural telephone companies to alert the Commission of systemic problems receiving the calls from a particular originating long-distance provider and facilitates provider-to-provider resolution.

12. *Other Actions.* In December 2012, the Oregon Public Utilities Commission adopted additional Conditions of Certificates of Authority requiring a certificate holder to take reasonable steps to ensure that it does not adopt or perpetuate intrastate routing practices that result in lower-quality service to an exchange with higher terminating access rates.

III. Discussion

13. There is ample evidence that rural call completion problems are widespread and serious. We are dedicated to ensuring that all Americans receive high-quality telephone service. Although the Commission has stated unequivocally that traffic may not be blocked, choked, reduced, or restricted, we have learned that carriers often do not retain records that permit the Commission to determine compliance with these prohibitions. To that end, in this NPRM we propose rules that would help the Commission monitor originating providers' call-completion performance and ensure that telephone service to rural consumers is as reliable as service to the rest of the country. In essence, these proposed rules would require facilities-based originating long-distance voice service providers to collect and report to the Commission data on call answer rates. For purposes of this Notice, originating long-distance voice service providers include local exchange carriers, interexchange carriers, commercial mobile radio service (CMRS) providers, and interconnected VoIP service providers. We seek comment on whether these proposed rules should apply to other categories of providers as well, such as one-way VoIP service providers, and on the Commission's authority to extend these proposed rules to such providers. We also welcome data explaining why call answer rates might differ between rural and nonrural areas and why any differential may be reasonable.

14. We also propose a rule that would prohibit both originating providers and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted. We seek comment on whether these proposed rules will help alleviate rural call completion problems, or whether the Commission should consider different approaches, and, if so, what those approaches are.

15. We recognize that even when calls to rural areas in particular do get answered, the communications quality of the call may be so poor as to render the communication between the calling and called parties unsuccessful. While we do not propose call communications quality standards at this time, we will continue to monitor the problem, and we may revisit the issue in the future if improvements in call answer rates and signaling integrity do not result in concomitant improvements in call communications quality.

A. Data Reporting, Recordkeeping, and Retention

16. Our processing of informal complaints that have been filed with the Commission concerning rural call completion problems indicates that some originating long-distance providers collect and retain the call history data that support detection of problems with calls to rural areas. However, we have also found that some long-distance providers do not collect and retain information on failed call attempts that is necessary for segregating the percentage of calls failing to complete to rural areas from all calls being carried to all destinations. As a result, some long-distance providers appear unable to analyze rural

call performance relative to overall performance or to distinguish the performance of intermediate providers in delivering calls to rural areas. Additionally, this lack of data has impeded Enforcement Bureau investigations.

17. Consequently, subject to certain limitations and safe harbors discussed below, we propose to adopt rules that would require facilities-based originating long-distance voice service providers to collect and retain basic information on call attempts and to periodically undertake a basic call completion summary analysis and report the results to the Commission. If the originating long-distance voice service provider is not facilities based, we propose to apply these obligations to the first facilities-based provider in the call-delivery chain, because the facilities-based provider will have access to the inaugural call detail information.

18. Below, we seek comment on our proposed rules, the types of carriers and providers to be covered by these rules, the general categories of call attempts covered, the types of calls that should be excluded, the information to be collected on each call attempt covered, and the length of time such information should be retained. We also seek comment on possible safe harbors that would relieve providers of reporting obligations and reduce their record retention requirements.

19. Our authority for these reporting, record keeping, and retention rules lies in sections 201(b) and 202(a) of the Act: call routing practices that lead to rural call termination and quality problems may violate the prohibition against unjust and unreasonable practices in section 201(b), or may violate carriers' duty under section 202(a) to refrain from unjust or unreasonable discrimination in practices, facilities, or services. Sections 218, 220(a), and 403 of the Act provide additional authority for these proposed rules with regard to carriers. To the extent that these proposed rules would apply to VoIP providers, we propose to exercise our ancillary authority to the extent that VoIP services are information services, on the ground that such requirements would be necessary for the Commission to carry out its section 201(b) and 202(a) obligations with regard to carriers. We seek comment on this analysis and any additional sources of possible authority, such as section 403.

1. Proposed Reporting, Recordkeeping, and Retention Requirements

20. *Reporting Requirements.* We propose to adopt a rule requiring that facilities-based originating long-distance providers measure the call answer rate for each rural operating company number (OCN) to which 100 or more calls were attempted during the calendar month for the categories of call attempts identified below, and that originating long-distance providers also measure the overall call answer rate for nonrural call attempts. We propose to adopt a rule requiring that originating long-distance providers submit in electronic form the monthly call answer rate for rural OCNs with 100 attempts or more and the nonrural monthly overall average to the Commission once per calendar quarter. The data collection and reporting requirements that we propose would allow the Commission to compare an originating provider's performance in delivering interstate and intrastate long-distance calls to rural local exchanges versus nonrural local exchanges. We believe that it is necessary to measure performance at the individual rural telephone company level, as identified by the OCN, to ensure that poor performance to any individual rural telephone company is not masked, as it otherwise would be by averaging together calls to all rural telephone companies or averaging call data for rural and nonrural areas.

21. We seek comment on our proposed reporting requirements. Is the proposed 100 call per month threshold appropriate or, for example, should the threshold be tied to a provider's overall number of call attempts, such as a percentage of overall call attempts? Should all call attempts be included, or just those attempted in some peak period such as between noon and 6:00 p.m. Eastern time? Are the proposed monthly measurement and quarterly reporting intervals appropriate? For example, is the nature of chronic call routing failures such that measurement data analyzed monthly masks problems that a weekly measurement would capture? If the Commission adopts quarterly reporting requirements, on what dates should they be filed? We seek comment on the benefits and burdens associated with our proposed reporting requirements. We seek comment on whether the information that will be provided should be treated as confidential or be open to public inspection.

22. *Record Keeping and Retention.* We propose to adopt a rule requiring that providers record information for each long-distance call attempt they handle. We propose that, in addition to calling party number, called party number, and date and time, the information recorded on each call attempt include: (1) Whether the call attempt was handed off to an intermediate provider and, if so, which intermediate provider; (2) whether the call attempt was going to a rural carrier and, if so, which rural carrier as identified by its OCN; (3) whether the call attempt was interstate; and (4) whether the call attempt was answered. We propose that providers be required to retain these call attempt records in a readily retrievable form for a period that includes the six most recent complete calendar months.

23. We seek comment on our proposed record-keeping and record-retention requirements. We also seek comment generally on the long-distance records and data that originating providers currently collect in the normal course of business, and to what extent they already (1) capture and (2) retain the information proposed. For example, do originating providers typically retain the information we propose to be retained on each call attempt, including on failed attempts? We seek comment on the benefits and burdens associated with collecting and retaining information as described above that is additional to currently collected information. We seek comment on whether recording and retaining a statistically valid sample of data could fulfill the purposes of data retention and provide the basis for the required reporting while being less burdensome. Would a statistical sample support enforcement action in connection with a provider's call-completion practices?

24. *Entities Covered By Proposed Rules.* As noted above, we propose to adopt a rule requiring that if the originating provider is not facilities based, the record-keeping, retention, and reporting requirements proposed in this NPRM would apply to the first facilities-based provider that is involved in handling the call. In cases where the first facilities-based provider serves multiple non-facilities-based originating providers, the facilities-based provider should aggregate the call attempt information for all such non-facilities-based providers into a single report. We seek comment on this proposal. Does limiting these proposed requirements to facilities-based providers ensure that the rules apply to the entity with the most direct access to call records, thus minimizing the burden of compliance? Should the Commission also impose record-keeping and reporting requirements on intermediate providers? If so, what types of record-keeping and reporting requirements? Would the burden of compliance be lower for intermediate providers that also provide originating service to end users? We seek comment generally on

the benefits and burdens associated with limiting our proposed requirements to facilities-based providers.

25. *Categories of Call Attempts.* For purposes of this rulemaking, we propose to categorize long-distance call attempts according to call source type and terminating provider type. With respect to call source type, the provider subject to these proposed rules will be either a facilities-based originating long-distance voice service provider or, if the originating provider is not facilities based, the first facilities-based long distance service provider in the call-completion chain. We propose that data collection requirements cover, at a minimum, the following source-termination categories of long-distance call traffic: originating provider to rural telephone company (including rural CLEC), originating provider to nonrural LEC (including nonrural CLEC), first facilities-based provider to rural telephone company (including rural CLEC), and first facilities-based provider to nonrural LEC (including nonrural CLEC). We seek comment on whether other categories of calls should also be covered, such as calls to CMRS subscribers, which do not normally incur high termination access charges on termination in rural areas and have not been the subject of the same types of complaints as calls to rural telephone companies.

26. We seek comment on whether these proposed categories are both necessary and sufficient for purposes of the data retention and reporting described above. For example, should some subcategories, such as traffic to nonrural CLECs, be excluded? We note that some providers may handle substantial amounts of auto-dialer traffic on behalf of retail business customers who may have call completion expectations and capacity requirements that are different from those of residential and business callers. Can such auto-dialer traffic sources be reliably identified, and if so, should auto-dialer call attempts be excluded from traffic sources? Our principal objective is to compare a provider's rural and nonrural performance. Is it thus reasonable to require providers that can identify and exclude auto-dialer traffic to do so, even if other providers may not be able to do so? We are aware that auto-dialers are also used to distribute emergency alert notifications, including across some rural areas. Can emergency auto-dialer sources be reliably identified, and if so, can and should emergency auto-dialer traffic be included even if other auto-dialer traffic is excluded?

27. *Call Attempts That Can Be Excluded.* We propose to use a ''call answer rate'' as the basic measure of call completion performance. An ''answered call attempt'' means a call attempt that is answered by the called party, including, for example, by voicemail, answering machine, or fax machine. We calculate a call answer rate as ''the number of call attempts that result in an answer divided by the total number of calls attempted, expressed as a percentage.'' In the following paragraphs, we propose the types of call attempts to be included and excluded when calculating the call answer rate.

28. In the typical arrangement, an intermediate provider must hand a call back to the upstream provider if it cannot expeditiously hand off the call attempt downstream, *e.g.,* to the terminating provider. This is so the upstream provider can attempt to complete the call using another intermediate provider or over its own facilities. In order to avoid double-counting such multiple attempts for the same call, we propose that call attempts that are handed back to the upstream provider should be excluded from data collection and reporting requirements. We seek comment on whether it is feasible and appropriate to exclude such call attempts in view of the reporting objective.

29. When a terminating provider is successful or unsuccessful in completing a call, it signals a ''cause value'' giving a precise indication of the event. Cause values can be classified into three general categories indicating the nature or origin of the event: Call Completed, User, and Network. One commonly occurring ''User'' cause is ''unallocated number'' (cause value 0), which indicates that the caller has dialed a properly formatted telephone number, but that number itself is not assigned. Excluding all call attempts indicating that the user apparently misdialed could mask call attempts that actually failed or were dropped within an intermediate provider's network, because there is anecdotal evidence to suggest that calling parties sometimes receive intercept messages that wrongly indicate, for example, that the call cannot be completed as dialed. We thus propose that all call attempts to an ''unallocated number'' be retained. We seek comment on this proposal. Similarly, we have anecdotal evidence that other ''User'' events, such as ''user busy,'' ''no user responding'' (*i.e.,* ring no answer) or ''number changed,'' which should be signaled only by the terminating provider, are sometimes being signaled by intermediate providers. Consequently, the most reliable measure is whether the call attempt is actually answered (''call completed'' cause values 16 and 31); excluding call attempts indicating apparent user behavior such as ''user busy'' or ''user not responding'' could mask call attempts that actually failed or were dropped within an intermediate provider's network. Thus we propose that any call attempt not answered and showing a ''User'' category release cause code should be included in the total of call attempts. We seek comment on this proposal.

30. We seek comment on other types of long-distance call attempts that should be excluded from the categories of call attempts covered. For example, can calls to toll-free numbers be reliably excluded? Should answered calls of very short duration, such as less than two seconds, be excluded? Are there internal network test calls that are readily identifiable and easily excluded?

2. Proposed Limitations on Application of Reporting and Retention Rules

31. In order to lessen the burden of compliance with these proposed rules, we propose to require only those originating long-distance providers and other covered providers with more than 100,000 retail long-distance subscribers (business or residential) to retain the basic information on call attempts and to periodically report the summary analysis of that information to the Commission. We seek comment on this proposal. Would the exclusion of smaller providers compromise the Commission's ability to monitor rural call completion problems effectively?

32. We also propose two safe harbors by which providers can avoid or reduce their obligations under the data reporting and retention obligations that we propose in this NPRM. The purpose of these safe harbors is to minimize the burden of compliance without compromising the goals of these rules. We seek comment on the proposed safe harbors, and whether they should include safeguards to ensure that providers' call-completion performance does not suffer. For example, should we delegate to the Wireline Competition Bureau authority to revoke a provider's eligibility for these safe harbors if the Commission receives a certain number of complaints about that provider's call-completion performance? If so, what would be an appropriate number of complaints or other trigger to justify revoking eligibility for the safe harbors?

33. *Managing Intermediate Provider Safe Harbor.* Our first proposed safe harbor would relieve a provider of all call completion data retention and reporting obligations proposed in this

NPRM. To qualify for this safe harbor, a provider must certify on an annual basis that it restricts by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path before the call reaches the terminating provider. The provider must further certify that any nondisclosure agreement with an intermediate provider permits the originating provider to reveal the identity of the intermediate provider to the Commission and to the rural carrier(s) whose incoming long-distance calls are affected by the intermediate provider's performance. Finally, the provider must certify that it has a process in place to monitor the performance of its intermediate providers in completing calls to individual rural telephone companies as identified by Operating Carrier Number.

34. We seek comment on this proposed safe harbor. For example, will restricting the number of intermediate providers in the call path from a retail customer improve the originating provider's control sufficiently to maintain rural call answer rates that are on par with nonrural rates? Is the restriction to no more than two intermediate providers between the originating provider and the terminating provider the appropriate number? Will providing the identity of the intermediate provider that is affecting the incoming long-distance calls assist the terminating rural provider in troubleshooting with other originating providers?

35. *Monitoring Performance Safe Harbor.* Our second proposed safe harbor would subject a provider to a reduced call-completion data retention obligation and relieve the provider of all reporting obligations proposed in this Notice. To qualify for this safe harbor, a provider must certify on an annual basis that for each of the previous 12 months, it has met the following performance standard: the average call answer rate for all rural carriers to which the provider attempted more than 100 calls in a month was no more than 2 percent less than the average call answer rate for all calls it placed to nonrural carriers in the same month, and the call answer rates for 95 percent of those rural carriers to which the provider attempted more than 100 calls were no more than 3 percent below the average rural call answer rate. Finally, the provider must certify that it has a process in place to investigate its performance in completing calls to individual rural telephone companies (as identified by Operating Carrier Number) for which the call answer rate is more than 3 percent below the average of the rural call answer rate for all rural telephone companies to which it attempted more than 100 calls. Providers that certify compliance with this safe harbor would be relieved of any quarterly reporting obligation and would be required to retain call attempt data in readily retrievable form for a reduced period of three months.

36. We seek comment on this proposed safe harbor. Are these proposed thresholds reasonable and appropriate? Are calls to business customers more likely to be answered than calls to residential customers, and is the percentage of calls to business customers in nonrural area higher than in rural areas such that a call answer rate differential is appropriate, and if so, are the differentials proposed above reasonable? Is the nature of chronic call routing failures such that measurement data analyzed monthly masks significant problems? Would it be more appropriate to set a threshold based on weekly or other measurements? Is three months of past information sufficient if any investigation of rural call completion or service quality issues is deemed necessary, notwithstanding that a particular type of safe harbor certification has been made?

3. Duration of Proposed Reporting and Retention Rules

37. In the *USF/ICC Transformation Order,* the Commission adopted rules that may ultimately address the root causes of many rural call completion problems. In particular, in comprehensively reforming intercarrier compensation, the Commission adopted a bill-and-keep methodology for all intercarrier traffic, and adopted a transition plan to gradually reduce most termination charges, which, at the end of the transition, should eliminate the primary incentives for cost-saving practices that appear to be undermining the reliability of rural telephone service.

38. NARUC has argued, and we agree, that there is a need to limit the harmful effect of these rural call completion problems on consumers in the near term. Accordingly, we propose these rules to provide prompt relief to rural consumers who are receiving inferior telephone service. We seek comment, however, on whether the rules we propose today should expire at the end of the intercarrier compensation reform transition period or some other point. Would a sunset provision reduce the burden of compliance? Would rural consumers be sufficiently protected from call completion problems if the rules expire at that time? If not, we seek comment on alternative sunset dates, or whether the requirements should remain in effect until the Commission modifies the relevant rules.

B. Proposed Ring Signaling Integrity Requirements

39. A major complaint by rural representatives regarding call termination problems is ''false audible ringing,'' in which the long-distance caller hears prolonged ringing—and so finally hangs up—before the rural phone he called has rung at all. This appears to be relatively new as a widespread phenomenon, and is brought about when the originating provider or an intermediate provider prematurely triggers the audible ring tone to the caller before the call setup request has actually reached the terminating rural provider. An originating provider or intermediate provider may do this to mask the silence that would otherwise be heard by the caller during excessive call setup time. Moreover, once an intermediate provider provides a ringing indication to an originating provider while still processing the call, the call cannot be handed back to the preceding provider for an alternate route.

40. This premature audible ringing departs from the long-established telephony signaling practice (and end-user expectation) of audible ringing indication being provided to the caller only after the terminating provider affirmatively signals that the called line is free and the called party is being alerted. The net effect of this practice is to unfairly make it appear to the caller that the terminating rural provider is responsible for the call failure, instead of the originating provider. Complaints filed with the Commission indicate that this misperception is often shared by the rural called party, who may eventually hear his phone ringing and answer after the calling party has finally hung up.

41. The decision by some providers to deviate from traditional industry practice is likely to harm consumers in rural areas. We therefore propose a new rule that would prohibit both originating providers and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted. Originating providers and intermediate providers must also convey audio tones and announcements sent by the terminating provider to the calling party. This proposal would codify a widely accepted industry practice that has in the past proven effective. We expect that the proposed rule will improve the ability to identify the provider responsible for service failures,

without imposing unduly burdensome costs.

42. Our authority for this ring signaling integrity rule lies in section 201(b) of the Act: it is an unreasonable practice to send misleading ring sounds to customers making long-distance phone calls, as it may cause them to believe that the called party is not answering when in fact the call has not yet been connected or has been connected for a shorter time than the ring sounds would lead the calling party to believe. To the extent that this proposed rule would apply to VoIP providers, we propose to exercise our ancillary authority to the extent that VoIP services are information services, on the ground that such requirements would be necessary for the Commission to carry out its section 201(b) obligations with regard to carriers. We seek comment on this analysis and any additional sources of possible authority.

43. We invite comment on this proposed rule and on whether it is consistent with prior telephony industry practice and telephone user expectation with respect to the meaning of audible ringing. We seek comment on whether the proposed rule is consistent with recommended industry practice for TDM- and IP-based telephony interworking. We seek comment on the benefits and burdens associated with this proposed rule. We also seek comment on the need to extend these requirements to non-interconnected VoIP providers and on the Commission's authority to do so. Finally, we seek comment on whether, for technical reasons, any aspect of this proposed rule should be applied differently to originating CMRS carriers.

IV. Procedural Matters

A. Paperwork Reduction Act

44. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

B. Regulatory Flexibility

45. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this notice of proposed rulemaking, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this notice of proposed rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the notice of proposed rulemaking. The Commission will send a copy of the notice of proposed rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the SBA. In addition, the notice of proposed rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**.

C. Ex Parte Presentations

46. The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

2. The NPRM seeks comment on a variety of issues relating to possible remedies for the problem of low call completion rates and poor overall call quality to rural America. As discussed in the NPRM, the proposed rules will provide an incentive for originating long distance providers to more closely monitor their call completion performance in rural areas and more actively manage their dealings with intermediate providers, while also providing more clarity to consumers in identifying the carriers responsible for call completion and quality problems. The ubiquity and reliability of the nation's telecommunications network are of paramount importance to the Communications Act of 1934, as amended, and problems adversely affecting that ubiquity and reliability threaten commerce, public safety, and the ability of consumers, businesses, and public health and safety officials in rural America to access and use a reliable network. In order to confront these challenges, the NPRM asks for comment in a number of specific areas.

1. Data Reporting and Retention Requirements

3. The NPRM first proposes that facilities-based originating long-distance voice service providers collect and

retain basic information on call attempts and report to the Commission data on call answer rates. The NPRM proposes that originating long-distance voice service providers include local exchange carriers, interexchange carriers, commercial mobile radio service (CMRS) providers, and interconnected VoIP service providers, and seeks comment on whether these proposed requirements should apply to other categories of providers, such as one-way VoIP service providers, and on the Commission's authority to extend the proposed rules to such providers. The NPRM proposes to apply these obligations to the first facilities-based provider in the call-delivery chain when the originating long-distance voice service provider is not facilities based. The NPRM also seeks comment offering data to explain any differential in call answer rates between rural and nonrural areas, and why such a differential may be reasonable.

4. Specifically, the NPRM proposes to adopt a rule requiring that facilities-based originating long-distance providers measure the call answer rate for each rural operating company number (OCN) to which 100 or more calls are attempted in a calendar month, as well as the overall call answer rate for nonrural call attempts, and to retain those records for a period including the six most recent complete calendar months. The NPRM seeks comment on these proposed requirements, including whether and to what extent originating providers collect and retain these sorts of call attempt records in the ordinary course of business, as well as on the benefits and burdens these data collection and retention requirements might produce.

5. The NPRM further proposes to adopt a rule requiring that originating long-distance providers report to the Commission the monthly call answer rate for rural OCNs with 100 attempts or more and the nonrural monthly overall average call answer rate once per calendar quarter in order that the Commission can compare an originating provider's performance in delivering interstate and intrastate long-distance calls to rural local exchanges versus nonrural local exchanges. The NPRM seeks comment on this reporting requirement, including whether the 100-call per month threshold is appropriate and whether a weekly reporting requirement would provide more useful data than the proposed monthly requirement, the benefits and burdens the proposed reporting requirements might produce, and whether the information reported should be treated as confidential or open to public inspection.

6. The NPRM also seeks comment on application of the proposed rules, if the originating provider is not facilities based, to the first facilities-based provider in the call chain. The NPRM seeks comment on whether limiting the proposed requirements to facilities-based providers ensures that the entities collecting and reporting this data are those with the most direct access to call records, thus minimizing the burden of compliance. The NPRM also seeks comment on whether the proposed rules, or some variation thereof, should also be applied to intermediate providers and whether the burden of compliance would be lower for intermediate providers that also provide originating service to end users. The NPRM seeks comment on the burdens and benefits associated with limiting the application of the proposed rules to facilities-based providers.

7. The NPRM proposes to adopt a rule requiring that providers record information for each long-distance call attempt they handle. In addition to calling party number, called party number, date and time, the NPRM proposes that the information recorded on each call attempt include: (1) Whether the call attempt was handed off to an intermediate provider and, if so, which intermediate provider; (2) whether the call attempt was going to a rural carrier and, if so, which rural carrier as identified by its OCN; (3) whether the call attempt was interstate; and (4) whether the call attempt was answered. The NPRM proposes that providers be required to retain these call attempt records in a readily retrievable form for a period that includes the six most recent complete calendar months. The NPRM seeks comment on these proposed record-keeping and record retention requirements, on what long-distance records and data that originating providers currently collect in the normal course of business, and on the benefits and burdens associated with collecting and retaining the information proposed.

8. The NPRM proposes to categorize long-distance call attempts according to call source type and terminating provider type. These proposed source-termination categories of long-distance call traffic include, at a minimum: originating provider to rural telephone company (including rural CLEC), originating provider to nonrural LEC (including nonrural CLEC), first facilities-based provider to rural telephone company (including rural CLEC), and first facilities-based provider to nonrural LEC (including nonrural CLEC). The NPRM seeks comment on whether these categories of call attempts are sufficient for the proposed rules, and also asks whether other categories of calls should be included, such as calls to CMRS subscribers.

9. The NRPM proposes to exclude from the proposed data collection and reporting requirements call attempts that are handed back to an upstream provider for further attempts at completion in order to avoid double-counting such multiple attempts for the same call. The NPRM seeks comment on this proposal. The NPRM also proposed to include in the data collection and reporting requirements all call attempts not answered that show a ''User'' category release cause code in response to concerns that excluding such call attempts could mask call attempts that actually failed or were dropped within an intermediate provider's network. The NPRM seeks comment on the appropriateness and efficacy of these proposals, and on whether other types of long-distance call attempts should be excluded.

2. Proposed Limitations on Application of Reporting and Retention Rules

10. The NPRM proposes to apply these reporting and retention requirements only to covered providers with more than 100,000 retail long-distance subscribers (business or residential) in order to reduce the burden of compliance with the proposed rules. It seeks comment on this proposal, and on whether the exclusion of smaller providers would compromise the Commission's ability to effectively monitor rural call completion problems.

11. The NPRM also proposes two safe harbors by which covered providers can avoid or reduce their reporting and retention obligations under the proposed rules in order to minimize the burden of compliance without compromising the goals of the proposed rules. The NPRM seeks comment on the proposed safe harbors, whether the proposed safe harbors will achieve that purpose, and whether the safe harbors should include safeguards to ensure that providers' call-completion performance does not suffer. The NPRM seeks comment on whether the Commission should delegate authority to the Wireline Competition Bureau to revoke a provider's eligibility for these safe harbors if the Commission receives a certain number of complaints about that provider's call-completion performance.

12. The NPRM proposes in the first safe harbor to relieve a covered provider of the proposed reporting and data retention requirements if it certifies

annually that it restricts by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path before the call reaches the terminating provider. This proposed safe harbor also requires a provider to certify that any nondisclosure agreement with an intermediate provider permits the originating provider to reveal the intermediate provider's identity to the Commission and to any rural carrier whose incoming long-distance traffic is affected by the intermediate provider's performance. Finally, the first proposed safe harbor requires the covered provider to certify that it has a process in place to monitor the performance of its intermediate providers in completing calls to individual rural telephone companies as identified by Operating Carrier Number.

13. The NRPM seeks comment on this proposed safe harbor, including whether restricting the number of intermediate providers in the call path from a retail customer will improve the originating provider's control sufficiently to maintain rural call answer rates that are on par with nonrural rates, whether the restriction to no more than two intermediate providers between the originating provider and the terminating provider is the appropriate number, and whether disclosing the identity of the intermediate provider will allow originating and terminating providers to troubleshoot more effectively.

14. The NRPM proposes in the second safe harbor to reduce to three months a covered provider's record retention obligations and eliminate its reporting obligations if it certifies annually that for each of the preceding 12 months: (1) its average call answer rate for all rural carriers to which the provider attempted more than 100 calls in a month was no more than 2 percent less than the average call answer rate for all calls it placed to nonrural carriers in the same month; and (2) the call answer rates for 95 percent of those rural carriers to which it attempted more than 100 calls were no more than 3 percent below the average rural call answer rate. The provider must also certify that it has a process in place to investigate its performance in completing calls to individual rural telephone companies (as identified by Operating Carrier Number) for which the call answer rate is more than 3 percent below the average of the rural call answer rate for all rural telephone companies to which it attempted more than 100 calls.

15. The NPRM seeks comment on this second proposed safe harbor, including whether the second proposed safe harbor's proposed thresholds are reasonable and appropriate, whether the safe harbor should make some allowance for any potential difference in call answer rates between residential and business customers, whether a weekly measurement requirement would reveal call-completion problems that a monthly measurement would mask, and whether three months of past information is sufficient if any investigation of rural call completion or service quality issues is deemed necessary.

16. The NPRM also seeks comment on whether the rules proposed should expire at the end of the intercarrier compensation reform transition period or some other point in view of the possibility that intercarrier compensation reform should eliminate the primary incentives for cost-saving practices that appear to be undermining the reliability of rural telephone service. The NPRM seeks comment on whether a sunset provision would reduce the burden of compliance, whether rural consumers would be sufficiently protected from call completion problems if the rules expire at that time, alternative sunset dates, and whether the proposed requirements should remain in effect until the Commission modifies the relevant rules.

3. Proposed Ring Signaling Integrity Requirements

17. The NPRM proposes a new rule that would prohibit both originating and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted. The proposed rule also requires originating providers to convey audio tones and announcements sent by the terminating provider to the calling party. The NPRM seeks comment on this proposed rule, including whether it is consistent with prior telephony industry practice, telephone user expectation with respect to the meaning of audible ringing, and recommended industry practice for TDM- and IP-based telephony interworking. The NPRM also seeks comment on the benefits and burdens associated with this proposed rule. Finally, the NPRM seeks comment on the need to extend these requirements to non-interconnected VoIP providers, including the Commission's authority to do so, and on whether, for technical reasons, any aspect of this proposed rule should be applied differently to originating CMRS carriers.

B. Legal Basis

18. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 201, 202, 218, 220(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 202, 218, 220(a), 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

19. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

20. Small Businesses. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

21. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

22. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM.

23. Incumbent Local Exchange Carriers (incumbent LECs). Neither the

Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the NPRM.

24. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

25. Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

26. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

27. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the NPRM.

28. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these local resale providers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

29. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these toll resale providers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

30. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was

the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the NPRM.

31. Wireless Telecommunications Carriers (except Satellite). Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

32. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

33. Cable and Other Program Distribution. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the NPRM.

34. Cable Companies and Systems. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the NPRM.

35. All Other Telecommunications. The Census Bureau defines this industry as including ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for this category; that size standard is $30.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,623 firms in this category that operated for the entire year. Of these, 2478 establishments had annual receipts of under $10 million and 145 establishments had annual receipts of $10 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

36. In the NPRM, the Commission proposes to require covered providers to report to the Commission the monthly call answer rate to each rural OCN to which 100 or more calls were attempted during the calendar month and the nonrural monthly overall average once per calendar quarter. Compliance with these reporting obligations may affect small entities, and may include new administrative processes.

37. In the NPRM, the Commission also proposes a rule requiring that an originating facilities-based provider or the first facilities-based provider in the call path record for each long-distance call it attempts, in addition to calling party number, called party number, date and time: (1) Whether the call attempt was handed off to an intermediate provider and, if so, which intermediate provider; (2) whether the call attempt was going to a rural carrier and, if so, which rural carrier as identified by its OCN; (3) whether the call attempt was interstate; and (4) whether the call attempt was answered. The Commission also proposes to require these providers to retain these records for a period including the six most recent calendar months. Compliance with these reporting obligations may affect small entities, and may include new administrative processes. We note parenthetically that in the NPRM, the Commission seeks comment on the benefits and burdens of these proposals, and on whether the categories of records to be retained are normally collected in the ordinary course of business.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

38. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

39. The Commission is aware that some of the proposals under

consideration will impact small entities by imposing costs and administrative burdens. For this reason, the NPRM proposes a number of measures to minimize or eliminate the costs and burdens generated by compliance with the proposed rules.

40. First, The NPRM proposes to require only those originating long-distance providers and other covered providers with more than 100,000 retail long-distance subscribers (business or residential) to retain the basic information on call attempts and to periodically report the summary analysis of that information to the Commission.

41. The NPRM proposes two safe harbor provisions that could reduce the economic impact on small entities. In the first safe harbor, the NPRM proposes to relieve covered providers of their reporting and retention obligations if they certify that: They restrict by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path before the call reaches the terminating provider; any nondisclosure agreement with an intermediate provider permits the originating provider to reveal the intermediate provider's identity to the Commission and to any rural carrier whose incoming long-distance traffic is affected by the intermediate provider's performance; and they have a process in place to monitor the performance of their intermediate providers in completing calls to individual rural telephone companies as identified by Operating Carrier Number.

42. In the second safe harbor, the NPRM also proposes to reduce to three months a covered provider's record retention obligations and eliminate its reporting obligations if it certifies annually that for each of the preceding 12 months: (1) Its average call answer rate for all rural carriers to which the provider attempted more than 100 calls in a month was no more than 2 percent less than the average call answer rate for all calls it placed to nonrural carriers in the same month; and (2) the call answer rates for 95 percent of those rural carriers to which it attempted more than 100 calls were no more than 3 percent below the average rural call answer rate. A covered provider must also certify that it has a process in place to investigate its performance in completing calls to individual rural telephone companies (as identified by Operating Carrier Number) for which the call answer rate is more than 3 percent below the average of the rural call answer rate for all rural telephone companies to which it attempted more than 100 calls.

43. In the NPRM, the Commission also seeks comment on whether the proposed rules should include a sunset provision to account for the possibility that reforms to the intercarrier compensation rules may alleviate many of the rural call completion problems addressed in the NPRM. Such a sunset provision could limit the costs and burdens of compliance with the proposed rules by establishing an end date for those costs and burdens.

44. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding. The proposed ring signaling integrity requirements in the NPRM could have an economic impact on both small and large entities. However, the Commission believes that any impact of such requirements is outweighed by the accompanying benefits to the public and to the operation and efficiency of the long distance industry.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

V. Ordering Clauses

45. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 201, 202, 218, 220(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 202, 218, 220(a), 403, this Notice of Proposed Rulemaking *is adopted.*

46. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64— MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Add subpart V to part 64 to read as follows:

Subpart V—Data Retention and Reporting of Call Answer Rates Affecting Long Distance Telephone Calls to Rural Areas

Sec.

64.2101 Definitions.
64.2103 Retention of call attempt records.
64.2105 Report of call answer rates.
64.2107 Exceptions from retention and reporting requirements.

Authority: 47 U.S.C. 151, 152, 154(i), 202(a), 220(a), 403.

§ 64.2101 Definitions.

(a) *Answered call.* The term ''answered call'' means a call that is answered by the called party, including by voicemail service, facsimile machine or answering machine.

(b) *Attempted call.* The term ''attempted call'' means a call that results in transmission by the reporting entity toward the terminating provider of the initial call setup message, regardless of the voice call signaling and transmission technology used.

(c) *Call answer rate.* The term ''call answer rate'' means the number of attempted calls that result in an answered call divided by the total number of attempted calls, expressed as a percentage.

(d) *Facilities-based provider.* The term ''facilities-based provider'' excludes providers that do not originate long distance calls using their own equipment and includes interconnected VoIP providers, for purposes of this part.

(e) *Intermediate provider.* The term ''intermediate provider'' has the same meaning as in § 64.1600(f).

(f) *Long distance voice service.* The term ''long distance voice service'' includes interstate inter-LATA, intrastate inter-LATA, interstate interexchange, intrastate interexchange, inter-MTA interstate and inter-MTA intrastate voice services.

(g) *Operating company number (OCN).* The term ''operating company number'' means a four-place alphanumeric code that uniquely

identifies a provider of local telecommunications service.

(h) *Originating long distance voice service provider (originating provider).* The term ''originating long distance voice service provider'' or ''originating provider'' includes a local exchange carrier as defined in § 64.4001(d), an interexchange carrier as defined in § 64.4001(e), a commercial mobile radio service provider as defined in § 20.3 of this chapter, and an interconnected voice over Internet Protocol (VoIP) provider as defined in 47 U.S.C. 153(25).

(i) *Rural CLEC.* The term ''rural CLEC'' has the same meaning as in § 61.26(a)(6) of this chapter.

(j) *Rural OCN.* The term ''rural OCN'' means an operating carrier number that uniquely identifies a rural telephone company. The term ''nonrural OCN'' means an operating carrier number that does not identify a rural telephone company.

(k) *Rural telephone company.* The term ''rural telephone company'' has the same meaning as in § 51.5 of this chapter.

§ 64.2103 Retention of call attempt records.

Except as described in § 64.2107, an originating long distance voice service provider (or first facilities-based provider when the originating provider is not facilities-based) shall retain records of attempted calls in a readily retrievable form for a period that includes the six (6) most recent complete calendar months:

(a) Information shall be retained for each attempted call to a rural telephone company (including rural CLEC) and nonrural LEC (including nonrural CLEC). An attempted call that is returned by an intermediate provider to the originating provider and re-assigned shall count as a single attempted call.

(b) The information contained in each ''record'' of an attempted call shall include:

(1) Calling party number;

(2) Called party number;

(3) Date;

(4) Time;

(5) An indication whether the call was handed off to an intermediate provider or not and, if so, which intermediate provider;

(6) An indication whether the called party number was assigned to a rural telephone company or not and, if so, the OCN of the rural telephone company;

(7) An indication whether the call was interstate or intrastate; and

(8) An indication whether the call was answered or not.

§ 64.2105 Report of call answer rates.

Except as described in § 64.2107, each originating long distance voice service provider (or its first facilities-based provider when the originating provider is not facilities-based) shall submit a report to the Commission in electronic form not later than the 15th day of the first month following the end of each calendar quarter. The information contained in the report shall include for each month in that quarter:

(a) For each rural OCN to which more than 100 calls were attempted during the month, the OCN, the state, the number of attempted calls, the number of attempted calls that were answered, and the call answer rate;

(b) For rural OCNs to which more than 100 calls were attempted during the month (all such OCNs in the aggregate), the total number of attempted calls, the total number of attempted calls that were answered, and the call answer rate; and

(c) For nonrural OCNs (in the aggregate), the total number of attempted calls, the total number of attempted calls that were answered, and the call answer rate.

§ 64.2107 Exceptions from retention and reporting requirements.

(a) An originating long distance voice service provider with 100,000 or fewer total retail long distance subscribers (business and residential combined) is not required to retain records of attempted calls or to report call answer rates as provided in this subpart. A first facilities-based provider for originating long distance service providers that do not report, and that provides service directly or indirectly to 100,000 or fewer retail long distance subscribers, is not required to retain records and to report as provided in this subpart.

(b) An originating provider or a first facilities-based provider that makes one of the following annual certifications is not required to report rural call completion rates to the Commission for one year following such certification. Providers filing Certification in paragraph (b)(1) of this section are not required to retain records of attempted calls, and providers filing Certification in paragraph (b)(2) of this section are required to retain records of attempted calls for only the three (3) most recent complete calendar months.

(1) *Certification of Intermediate Provider Management.* The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an originating long distance voice service provider or first facilities-based provider with first-hand knowledge of the accuracy and completeness of the information provided, certifies as follows: I _____ (name) _____ (title), an officer of _____ (entity), certify that _____ (entity) restricts by contract any intermediate provider to which a call is directed by (entity) from permitting more than one additional intermediate provider in the call path before the call reaches the terminating provider. I certify that any nondisclosure agreement with an intermediate provider permits _____ (entity) to reveal the identity of the intermediate provider to the Commission and to the rural telephone company(ies) whose incoming long-distance calls are affected by the intermediate provider's performance. I certify that _____ (entity) has a process in place to monitor the performance of its intermediate providers in completing calls to individual rural telephone companies as identified by Operating Carrier Number.

(2) *Certification of Rural Call Performance.* The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an originating long distance voice service provider or first facilities-based provider with first-hand knowledge of the accuracy and completeness of the information provided, certifies as follows:

I _____ (name) _____ (title), an officer of _____ (entity), certify that for each of the previous 12 full calendar months, _____ (entity) has met the following performance standard: the average of the call answer rates for all rural telephone companies as identified by Operating Carrier Number to which _____ (entity) attempted more than 100 calls in a month was no more than 2 percent less than the average call answer rate for all calls _____ (entity) placed to nonrural LECs in the same month, and the call answer rates for 95 percent of those rural telephone companies to which _____ (entity) attempted more than 100 calls were no more than 3 percent below the average rural call answer rate. I certify that _____ (entity) has a process in place to investigate its performance in completing calls to individual rural telephone companies as identified by Operating Carrier Number for which the call answer rate is more than 3 percent below the average of the rural call answer rate for all rural telephone companies to which _____ (entity) attempted more than 100 calls.

■ 3. Add subpart W to part 64 to read as follows:

Subpart W—Ring Signaling Integrity

Sec.

64.2201 Ringing indication requirements.

Authority: 47 U.S.C. 151, 152, 154(i), 201(b).

§ 64.2201 Ringing indication requirements.

(a) Telecommunications carriers and providers of interconnected Voice over Internet Protocol (VoIP) services, when originating interstate or intrastate traffic on the public switched telephone network (PSTN) or originating interstate or intrastate traffic that is destined for the PSTN, shall not generate a ringing indication locally that is conveyed to the calling party until the terminating provider has signaled that the called party is being alerted to an incoming call, such as by ringing. If the terminating provider signals that the called party is being alerted and provides an audio tone or announcement, originating providers are required to cease any locally-generated audible tone or announcement and convey the terminating provider's tone or announcement to the calling party. The scope of this provision includes any voice call signaling and transmission technologies.

(b) Intermediate providers within an interstate or intrastate call path that originates and/or terminates on the PSTN must return unaltered to providers in the call path any signaling information that indicates that the terminating provider is alerting the called party, such as by ringing. An intermediate provider may not generate signaling information that indicates the terminating provider is alerting the called party unless it has received such an indication from the terminating provider. Intermediate providers must also return unaltered any audio tone or announcement provided by the terminating provider. The scope of this provision includes any voice call signaling and transmission technologies.

[FR Doc. 2013–08527 Filed 4–11–13; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 78, No. 71
Friday, April 12, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 8, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by May 13, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Arapaho-Roosevelt National Forest Transportation System Alternatives Study.

OMB Control Number: 0596—NEW.

Summary of Collection: Under the authorities of the Forest Service Administration Organic Act of 1897 (16 U.S.C. 473–478, 479–482, and 551) as amended, by the Transfer Act of 1905 (16 U.S.C. 472, 524, and 554), the Forest and Rangeland Renewable Resources and Planning Act of 1974 (16 U.S.C. chapter 36) as amended and other authorities the Forest Service (FS) is obligated to actively solicit public input to improve National Forest system lands management to better serve the public. The Arapaho-Roosevelt National Forest (ARNF) lies in the Front Range of Colorado, a complex of federal land units and population centers, most notably Denver. Brainard Lake Recreation Area, including the Indian Peaks Wilderness, Guanella Pass and Mount Evans Recreation Center has been identified as the three sites within ARNF facing the most immediate transportation system needs. Intense use of these sites is negatively impacting traffic safety, recreation experience, and the natural resources.

Need and Use of the Information: The FS is evaluating the potential for the addition of alternative transportation to existing recreation transportation systems accessing these sites. The project will collect information that will help the FS improve transportation conditions, and recreation and resource management on the ARNF. In the summer of 2013, the Forest Service will use survey instruments designed to collect feedback from visitors to assess their perceptions, experiences, expectations and opinions about potential changes in the transportation system and the impact it would have on their recreation experience.

Description of Respondents: Individuals or households; Federal Government.

Number of Respondents: 1,700.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 238.

Forest Service

Title: McKenzie River and Trail Visitor Surveys, Flathead Wild and Scenic River Visitor Survey.

OMB Control Number: 0596–0229.

Summary of Collection: The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) (Pub. L. 93–378) guides planning and inventory activities on the National Forests. It requires the agency to inventory resources in the National Forests, including recreation opportunities, and to periodically review and update these assessments. The Forest Service Willamette National Forest and Flathead National Forest, in co-operation with National Park Service Glacier National Park, are proposing to continue collecting information in 2013, and if needed extended into 2014, from forest visitors using the Flathead and McKenzie and Wild and Scenic Rivers and McKenzie River National Recreational Trail. The McKenzie visitor survey will (1) support implementation of the existing Willamette National Forest Land and Resource Management Plan (USFS 1990) and Upper McKenzie River Management Plan (''UMRMP,'' USFS 1992), (2) assess changes in visitor experience that have occurred since a previous river study in 1996, and (3) inform management practices to protect and enhance the outstandingly remarkable values identified for the McKenzie River, as required by the Wild and Scenic Rivers Act. The Flathead visitor survey, which is being conducted in partnership with Glacier National Park, will (1) support the development of a Comprehensive River Management Plan (CRMP) and, in particular, will assist managers in determining a user capacity for the river, both of which are statutory requirements of the Wild and Scenic River Act and (2) help determine the allocation of service days for outfitters and guides and develop thresholds and standards for important, measurable attributes.

Need and Use of the Information: The information will be used in conjunction with other information about natural resource conditions by Flathead and Willamette National Forest and Glacier National Park managers in taking actions to provide optimum recreation experiences for visitors, while still protecting the natural resource. Information from this study will help managers determine how well river and

trail values are being protected and what actions may be needed to ensure the outstandingly remarkable values for which the rivers were designated is protected and enhanced. The surveys will be administered on-site. Collecting thoughts from the public on how these areas should be managed and consideration of their interest and priorities is a critical component to developing a fair and balanced management plan and strategy. Without the public's involvement, a plan has the risk of being biased and ineffective. Without the information from this survey, managers would not have representative information about public perceptions and preferences.

Description of Respondents: Individuals or households.

Number of Respondents: 3,300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1.213.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–08540 Filed 4–11–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Six Rivers National Forest, California, Trinity Summit Range Assessment Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Six Rivers National Forest will prepare an Environmental Impact Statement (EIS) to disclose the impacts associated with the re-authorization of livestock grazing in the Trinity Summit area on the Lower Trinity Ranger District through an adaptive management process.

The planning area is located on National Forest System lands administered by the Lower Trinity Ranger District in Humboldt County, California within the upper Mill Creek and Tish Tang a Tang Creek watersheds to the east of Hoopa Valley Indian Reservation. Small portions of the planning area are located in the headwaters of Horse Linto Creek and Red Cap Creek. The majority of the grazing lands fall within the Trinity Wilderness and are considered to be culturally significant. The grazing lands are located in all or portions of T. 7 N., R. 6 E., R. 7 E.; T. 8 N., R. 5 E.; R. 6 E., R. 7 E.; and T. 9 N., R. 5 E., R. 6 E., R. 7 E.

DATES: Comments concerning the scope of the analysis must be received by May 28, 2013. The draft EIS is expected October 2013 and the final EIS is expected March 2014.

ADDRESSES: Send written comments to Carolyn Cook, Trinity Summit Range Assessment, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Electronic comments, in acceptable plain text (.txt), rich text (.rtf), or Word (.doc) may be submitted to *comments-pacificsouthwest-six-rivers-lower-trinity@fs.fed.us*. Please ensure that ''Trinity Summit Range Assessment'' occurs in the subject line.

FOR FURTHER INFORMATION CONTACT: Nolan Colegrove, District Ranger, at 530–627–3291 or Carolyn Cook, Project Lead, at 707–441–3551. You may also access the scoping documents from the Forest's Web site at *http://www.fs.fed.us/nepa/fs-usda-pop.php/?project=41307*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Mill Creek and Trinity Summit allotments occupy 13,128 and 20,325 acres respectively, are located adjacent to the eastern boundary of the Hoopa Valley Indian Reservation, and include portions of the Trinity Alps Wilderness Area. This region, known as the Trinity Summit area, is mostly above 5,000 feet in elevation. The majority of acreage in both allotments is dominated by coniferous forest vegetation. Shrublands also occupy significant portions of the allotments, especially in areas that were affected by the 1999 Megram Fire which burned a portion of each allotment at a high or moderate intensity. Although the majority of acreage within the analysis area is forested, herbaceous plant communities exist within forest openings near the headwaters of Horse Linto, Mill and Tish Tang creeks.

Purpose and Need for Action

The purpose and need for action centers on maintaining a grazing program under updated allotment management plans for the purposes of contributing to the economic stability of local livestock producers who rely on public lands grazing for their livelihood while sustainably managing for healthy rangeland ecosystems that maintain biologic diversity, wilderness characteristics, water quality, soil productivity, and quality fish and wildlife habitat; preserving and enhancing the character of culturally significant landscapes; and meeting the Rescissions Act of 1995, Public Law 104, as directed by Congress. The purpose of the Rescissions Act is to evaluate and analyze the re-authorization of grazing. As directed by the Six Rivers National Forest Land and Resource Management Plan (LRMP), the opportunity to graze must also be consistent with the values and uses of other resources. Rangelands, as well as all other resources within the grazing allotments, should be maintained in satisfactory condition. Because unsatisfactory resource conditions have been identified at monitoring sites within the allotments, action is required that will help restore satisfactory conditions. Restoration of satisfactory rangeland conditions is possible with adaptive management and grazing permit administration.

Proposed Action

The Six Rivers National Forest proposes to continue livestock grazing in the Trinity Summit area under the conditions described below and to implement boundary and administrative changes to facilitate improved management. The Mill Creek and Trinity Summit grazing allotments would be combined into a single allotment. A non-significant Forest Plan amendment is proposed to modify the allotment boundary to include a 225-acre area on the western boundary of the current allotment (T. 8 N., R 6 E. Section 3).This is an administrative adjustment to include an area that has been continuously grazed.

The Forest also proposes to re-authorize livestock grazing under existing permitted use through an adaptive management process. Adaptive management will meet LRMP goals, objectives, standards and guidelines, and other legal requirements while moving toward desired conditions.

Responsible Official

Tyrone Kelley, Forest Supervisor, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501.

Nature of Decision To Be Made

The Responsible Official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or the no action (no grazing) alternative.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIS. No public meetings are planned during the scoping process, however, public meetings may be held in conjunction

with the release of the draft EIS. In 2009, Six Rivers National Forest solicited comments on a proposed action for the same allotments (74 FR 18685); however the analysis was not completed. Today's proposed action was developed in response to changed conditions in the allotments and reflects known conditions through 2012.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions regarding the current proposed action.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: April 4, 2013.

Tyrone Kelley,

Forest Supervisor.

[FR Doc. 2013–08446 Filed 4–11–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 1942, subpart A, ''Community Facility Loans.''

DATES: Comments on this notice must be received by June 11, 2013 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Derek L. Jones, Community Programs Loan Specialist, Rural Housing Service, U.S. Department of Agriculture, STOP 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, telephone: (202) 720–1504.

SUPPLEMENTARY INFORMATION:

Title: Community Facility Loans.

OMB Number: 0575–0015.

Expiration Date of Approval: June 30, 2013.

Type of Request: Extension of a currently approved information collection.

Abstract: The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

Community Facilities programs have been in existence for many years. These programs have financed a wide range of projects varying in size and complexity from large general hospitals to small day care centers. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes.

Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 13 hours per response.

Respondents: Public bodies, not for profits, or Indian Tribes.

Estimated Number of Respondents: 21,792.

Estimated Number of Responses per Respondent: 1.4.

Estimated Total Annual Burden on Respondents: 57,967.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0040.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 2, 2013.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2013–08536 Filed 4–11–13; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Energy Answers Arecibo, LLC: Notice of Intent To Prepare a Supplemental Final Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent To Prepare a Supplemental Final Environmental Impact Statement.

SUMMARY: The Rural Utilities Service (RUS) intends to prepare a Supplemental Final Environmental Impact Statement (SFEIS) to meet its responsibilities under the National Environmental Policy Act (NEPA), the Council on Environmental Quality's regulations for implementing NEPA (40 CFR Parts 1500–1508), and RUS's Environmental and Policies and Procedures (7 CFR Part 1794) in connection with potential impacts related to a proposal by Energy Answers Arecibo, LLC. The proposal consists of constructing a waste to energy generation and resource recovery facility in the Cambalache Ward of Arecibo, Puerto Rico. Energy Answers Arecibo, LLC may request a loan guarantee from RUS.

DATES: The SFEIS is scheduled for publication in March 2013. A notice of availability will be published in the **Federal Register** announcing its review period.

ADDRESSES: To send comments or for further information, please contact Ms. Lauren (McGee) Rayburn, Environmental Scientist, USDA Rural Utilities Service, P.O. Box 776, Haw River, North Carolina 27258–0776, telephone: (202) 695–2540, fax: (202) 690–0649, or email:

lauren.mcgee@wdc.udsa.gov. Project related information will be available for download from RUS' Web site located at: *http://www.rurdev.usda.gov/UWP-eis4.htm*.

SUPPLEMENTARY INFORMATION: Energy Answers Arecibo, LLC proposes to a construct a waste to energy generation and resource recovery facility in the Cambalache Ward of Arecibo, Puerto Rico. The proposed facility would process approximately 2100 tons of municipal waste per day and generate a net capacity of 77 megawatts (MW). The Puerto Rico Electric Power Authority will purchase power generated from the facility. The preferred location of the facility is the site of a former paper mill and would cover approximately 79.6 acres of the 90-acre parcel. The proposal would include the following facility components: A municipal solid waste receiving and processing building; processed refuse fuel storage building; boiler and steam turbine; emission control system; ash processing and storage building; and other associated infrastructure and buildings. Two other connected actions, which would be constructed by other utilities, include installation of an approximately 2.0-mile raw water line and construction of a 38 kilovolt (kV) transmission line approximately 0.8 miles in length. The connected actions will be addressed in the proposal's SFEIS.

The Puerto Rico Industrial Development Company (PRIDCO) served as lead agency in preparation of a Final EIS prepared under Puerto Rico Article 4(b)(3), Law No. 46 (September 22, 2004), Environmental Public Policy Law. In accordance with 7 CFR 1794.74, RUS will incorporate by reference the environmental document prepared by PRIDCO into RUS's SFEIS.

Among the alternatives that RUS will address in the SFEIS is the No Action alternative, under which the proposal would not be undertaken. In the SFEIS, the effects of the proposal will be compared to the existing conditions in the proposal area. Public health and safety, environmental impacts, and engineering aspects of the proposal will be considered in the SFEIS.

RUS is the lead Federal agency, as defined at 40 CFR 1501.5, for preparation of the SFEIS. With this Notice, federally recognized Native American Tribes and Federal agencies with jurisdiction or special expertise are invited to be cooperating agencies. Such tribes or agencies may make a request to RUS to be a cooperating agency by contacting the RUS contact provided in this Notice. Designated cooperating agencies have certain responsibilities to support the NEPA process, as specified at 40 CFR 1501.6(b).

As part of its broad environmental review process, RUS must take into account the effect of the proposal on historic properties in accordance with Section 106 of the National Historic Preservation Act (Section 106) and its implementing regulation, ''Protection of Historic Properties'' (36 CFR part 800). Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Accordingly, comments submitted in response to this Notice will inform RUS decision-making in its Section 106 review process. Any party wishing to participate more directly with RUS as a ''consulting party'' in Section 106 review may submit a written request to the RUS contact provided in this Notice.

As applicable, the SFEIS will document changes in the affected environment and environmental consequences that may have occurred since the PRIDCO-prepared Final EIS was published in 2010. The PRIDCO-prepared Final EIS will be available for review at the addresses provided in this Notice in both Spanish and English. RUS' SFEIS will incorporate this document by reference and focus on those topics that have changed since the PRIDCO-prepared Final EIS was finalized. RUS's SFEIS will be available for review and comment for 30 days. Following the 30-day review period, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the SFEIS and the ROD will be published in the **Federal Register** and in local newspapers.

Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with all relevant executive orders and federal, state, and local environmental laws and regulations in addition to the completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures, 7 CFR Part 1794, as amended.

Dated: February 20, 2013.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA, Rural Utilities Service.

[FR Doc. 2013–08629 Filed 4–11–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the National Advisory Committee on Racial, Ethnic, and Other Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals, both experts and organizational representatives, to the National Advisory Committee on Racial, Ethnic, and Other Populations. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section below, describes Committee objectives and duties, membership, and information about the nomination process.

DATES: Please submit nominations by May 13, 2013.

ADDRESSES: Please submit nominations to Jeri Green, Chief, Office of External Engagement, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted by fax at 301–763–8609, or by email to *jeri.green@census.gov* and *tom.loo@census.gov.*

FOR FURTHER INFORMATION CONTACT: Jeri Green, Chief, Office of External Engagement, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–2070 or Tom Loo at 301–763–5326.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (FACA) (Title 5, United States Code, Appendix 2). Information about the Committee objectives and duties, membership, and the nomination process is provided below.

Objectives and Duties

The Advisory Committee provides insight, perspectives, expertise and advice to the Director of the Census Bureau on the full spectrum of Census surveys and programs. The Committee assists the Census Bureau in developing appropriate research/methodological, operational, and communication strategies to reduce program/survey costs, improve coverage and operational efficiency, improve the quality of data collected, protect the public's and

business units' privacy and enhance public participation and awareness of Census programs and surveys, and make data products more useful and accessible.

The Committee advises on topics such as: hidden households, language barriers, students and youth, aging populations, American Indian and Alaska Native tribal considerations, new immigrant populations, populations affected by natural disasters, highly mobile and migrant populations, complex households, poverty populations, race/ethnic minorities, rural populations and population segments with limited access to technology. The Committee also advises on data privacy and confidentiality concerns, the dynamic nature of new businesses, minority ownership of businesses, as well as other concerns impacting Census survey design and implementation.

The Advisory Committee discusses census policies, research and methodology, tests, operations, communications/messaging and other activities and advises regarding best practices to improve censuses, surveys, operations and programs. The Committee's expertise and experiences help identify cost efficient ways to increase participation among hard to count segments of the population as well as ensuring that the Census Bureau's statistical programs are inclusive and continue to provide the Nation with accurate, relevant, and timely statistics.

The Committee uses formal advisory committee meetings, webinars, web conferences, working groups, and other methods to accomplish its goals, consistent with the requirements of the FACA. The Committee is encouraged to use Census Regional Office knowledge to help identify regional, local, tribal and grass roots issues, and capture regional and local perspectives about Census Bureau surveys and programs. The Committee should use technology and video/web conferencing to reduce meeting and travel costs, and to more fully engage local and regional working groups and hard to count populations.

The Committee functions solely as an advisory body under the FACA.

Membership

The Committee will consist of up to 32 members who serve at the discretion of the Director.

The Committee aims to have a balanced representation among its members, considering such factors as geography, age, gender, race, ethnicity, technical expertise, community involvement, knowledge of hard to count populations, and familiarity with Census Bureau programs and/or activities. The Committee will include a minimum three members with expertise on or with experience representing each of the following populations: African American; American Indian and Alaska Native; Asian; Hispanic; and Native Hawaiian and Other Pacific Islanders. The Committee aims to include members from diverse backgrounds, including state, local and tribal governments, academia, research, national and community-based organizations, and the private sector.

Membership shall include individuals, Special Government Employees (SGE), who are selected for their personal expertise with the topics highlighted above and/or representatives of organizations (Representatives) reflecting diverse populations, national, state, local and tribal interests, organizations serving hard to count populations, and community-based organizations. SGEs will be subject to the ethical standards applicable to SGEs. Members will be individually advised of the capacity in which they will serve through their appointment letters.

Membership is open to persons who are not seated on other Census Bureau stakeholder entities (i.e., State Data Centers, Census Information Centers, Federal State Cooperative on Populations Estimates program, other Census Advisory Committees, etc.). No employee of the federal government can serve as a member of the Advisory Committee.

Generally, members will serve for a three-year term. All members will be reevaluated at the conclusion of each term with the prospect of renewal, pending advisory committee needs. Active attendance and participation in meetings and activities (e.g., conference calls and assignments) will be considered when determining term renewal or membership continuance. Generally, members may be appointed for a second three-year term at the discretion of the Director.

Members are selected in accordance with applicable Department of Commerce guidelines.

Miscellaneous

Members of the Advisory Committee serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

The Advisory Committee meets at least twice a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Advisory Committee meetings are open to the public in accordance with the FACA.

Nomination Process

Nominations should satisfy the requirements described in the Membership section above.

Individuals, groups, and/or organizations may submit nominations on behalf of candidates. A summary of the candidate's qualifications (resumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must be able to actively participate in the tasks of the Advisory Committee, including, but not limited to regular meeting attendance, committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special committee activities.

The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Advisory Committee membership.

Dated: April 8, 2013.

Thomas L. Mesenbourg, Jr.,

Senior Advisor Performing the Duties of the Director, Bureau of the Census

[FR Doc. 2013–08680 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee; Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The teleconference meeting is scheduled for Friday, April 26, 2013, at 10:00 a.m. Eastern Daylight Time (EDT). Please register by 5:00 p.m. EDT on Wednesday, April 24, 2013 to listen in on the teleconference meeting.

ADDRESSES: The meeting will take place via teleconference. For logistical reasons, all participants are required to register in advance by the date specified above. Please contact Mr. Todd DeLelle at the contact information below to register and obtain call-in information.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue

NW., Washington, DC 20230. Phone: 202–482–4877; Fax: 202–482–5665; email: *todd.delelle@trade.gov.*

SUPPLEMENTARY INFORMATION: The meeting will take place from 10:00 a.m. to 11:00 a.m. This meeting is open to the public. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topic to be considered: The agenda for the April 26, 2013 ETTAC meeting has only the following item:

Deliberation on the creation of ETTAC subcommittees and the types of issues on which each will focus.

Background: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was originally chartered in May of 1994. It was most recently re-chartered until September 2014.

The teleconference will be accessible to people with disabilities. Please specify any requests for reasonable accommodation when registering to participate in the teleconference. Last minute requests will be accepted, but may be impossible to fill.

No time will be available for oral comments from members of the public during this meeting. As noted above, any member of the public may submit pertinent written comments concerning the Committee's affairs at any time before or after the meeting. Comments may be submitted to Mr. Todd DeLelle at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. Eastern Daylight Time on Wednesday, April 24, 2013, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Catherine Vial,

Team Leader, Office of Energy and Environmental Industries.

[FR Doc. 2013–08669 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Manufacturing Council will hold its first meeting of the newly appointed members to discuss and identify the priority issues affecting the U.S. manufacturing industry. The meeting will be an organizational meeting to discuss priorities that will be addressed in future meetings. The Council was re-chartered on April 5, 2012, to advise the Secretary of Commerce on government programs and policies that affect U.S. manufacturing and provide a means of ensuring regular contact between the U.S. Government and the manufacturing sector.

DATES: April 30, 2013, 9:30 a.m.

ADDRESSES: Department of Commerce, 1401 Constitution Avenue NW., Room 4830, Washington, DC 20230. Because of building security, all non-government attendees must pre-register. This meeting will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than April 23, 2013, to Elizabeth Emanuel, the Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone 202–482–4501, *elizabeth.emanuel@trade.gov.* Last minute requests will be accepted, but may be impossible to fill.

FOR FURTHER INFORMATION CONTACT: Elizabeth Emanuel, the Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *elizabeth.emanuel@trade.gov.*

SUPPLEMENTARY INFORMATION: No time will be available for oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before and after the meeting. Comments may be submitted to Elizabeth Emanuel at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. Eastern Time on April 23, 2013, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: April 9, 2013.

Jennifer Pilat,

The Manufacturing Council.

[FR Doc. 2013–08668 Filed 4–10–13; 11:15 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee (CINTAC) Public Meeting

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the CINTAC.

DATES: The meeting is scheduled for Wednesday, May 1, 2013, at 9:00 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 4830, U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. David Kincaid, Office of Energy & Environmental Industries, ITA, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1706; Fax: 202–482–5665; email: *david.kincaid@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background

The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics To Be Considered

The agenda for the May 1, 2013 CINTAC meeting will contain:

1. Welcome to the inaugural session of the third Civil Nuclear Trade Advisory Committee charter.

2. Informational briefing for members on Federal advisory committee service.

3. Selection of nominees for Chair and Vice Chair of the committee.

4. Selection of subcommittees.

5. Overview of the International Trade Administration's programs in support of the U.S. civil nuclear industry.

6. Public comment period.

Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. David Kincaid at the contact information below by 5:00 p.m. EDT on Friday, April 26, 2013 in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Kincaid and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Friday, April 26, 2013. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers. Speakers are requested to bring at least 40 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Friday, April 26, 2013. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: April 8, 2013.

Man K. Cho,

Team Leader for Energy, Office of Energy and Environmental Industries.

[FR Doc. 2013–08664 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Tuesday, May 14, 2013, at 9:00 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 4830 at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230. (Phone: 202–482–4877; Fax: 202–482–5665; email: *todd.delelle@trade.gov*). This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 9:00 a.m. to 3:30 p.m. EDT. This meeting is open to the public and time will be permitted for public comment from 3:00–3:30 p.m. EDT. Those interested in attending must provide notification by Friday, May 3, 2013 at 5:00 p.m. EDT, via the contact information provided above. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics To Be Considered

The agenda for this meeting will include an overview of the new ETTAC subcommittee structure and outline issues each will undertake throughout the term. The Committee will also review the role of the U.S. government in supporting the early adoption of environmental technologies and discuss ways to leverage the concept of sustainability to increase U.S. environmental exports. The status of the U.S. Environmental Export Initiative will also be discussed.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until September 2014.

Catherine Vial,

Team Leader, Office of Energy and Environmental Industries.

[FR Doc. 2013–08658 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Fish and Seafood Promotion; Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction.

SUMMARY: On April 3, 2013, a notice was published in the **Federal Register** (78 FR 20092) on the proposed information collection, Fish and Seafood Promotion. The information under the Data Section is corrected as follows:

Estimated time per response: 106 hours.

Estimated total annual burden hours: 318.

Estimated total annual cost to the public: $22.

All other information in the notice is correct and remains unchanged.

Dated: April 8, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–08567 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Crab Rationalization (CR) Program: Annual Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 11, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *Patsy.Bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

Since implementation of the Crab Rationalization (CR) Program (prior to the 2005–2006 season), critics of the program have pointed to high lease rates, fleet consolidation, absentee quota share (QS) ownership, and changes in crew compensation as some of the program's greatest shortcomings.

At its December 2011 meeting, the North Pacific Fisheries Management Council (Council) requested and received a report from the National Marine Fisheries Service (NMFS) reviewing the performance of the CR Program during its first 5 years. Based on the report and public testimony, the Council identified certain aspects of the program that need additional attention. The Council requested a discussion paper concerning certain measures from CR cooperatives that might promote acquisition of QS by crew and other active participants and promote equitable crew compensation. The Council specifically requested that the paper examine the ''best practice'' requirements for cooperative agreements. The paper was presented to the Council at the February 2013 meeting.

After receiving the presentation of the paper, the Council passed a motion in February 2013 requesting that each cooperative in the CR Program voluntarily provide an annual report to the Council to describe the measures the cooperative is taking to increase the transfer of quota share to active participants and crew members. While the high flexibility allowed cooperatives in use of their IFQ has permitted QS holders to achieve operational efficiencies, it has also allowed for inactive QS holders and inequitable crew compensation. Holdings of inactive QS holders may limit the amount of QS on the market. One solution may be to require that any cooperative member must meet an active participation requirement.

The annual report would also describe measures the cooperative is taking to lower currently high lease rates and to increase currently low crew compensation. The high lease rates in the fisheries may contribute to the decline in revenues to persons who actively participate in the fisheries as vessel owners and crew. Lower lease rates may allow for more of the fisheries' revenues to be realized by vessel owners and crews. Crews in the crab fisheries are typically paid a share (or percentage) of adjusted vessel revenues, with adjustments made for normal vessel expenses, such as bait and fuel. Since implementation of the CR Program, many vessel operators have also made adjustments for QS lease payments. To limit the effects of the leasing market and to protect crews from the financial impacts of high lease rates, the amount of any lease payments charged to crews could be limited or capped.

The annual report should describe the effectiveness of the measures implemented through the cooperatives and the estimated level of member participation in any voluntary measures, and should include supporting information and data. These reports are to be provided to the Council at its October meeting.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email, mail, and facsimile transmission of paper forms.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time per Response: CR Cooperative Annual Report, 10 hours.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost to Public: $50 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 8, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–08568 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Processed Products Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 11, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Melissa Yencho, (301) 427–8193 or *melissa.yencho@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

National Oceanic and Atmospheric Administration (NOAA) annually collects information from seafood and industrial fishing processing plants on the volume and value of their processed fishery products and their monthly employment figures. NOAA also collects monthly information on the production of fish meal and oil. The information gathered is used by NOAA in the economic and social analyses developed when proposing and evaluating fishery management actions.

II. Method of Collection

In the current survey, NOAA Fisheries provides each processor with a pre-printed survey form that includes the products produced by that processor in the previous year. The processor only needs to fill in the quantity of product, value of product, monthly employment, and add any new products. New firms to the survey are provided blank forms. Responses are submitted by mail, via postage-paid envelopes provided by NOAA Fisheries.

III. Data

OMB Control Number: 0648–0018.

Form Number: NOAA Forms 88–13, 88–13C.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 855.

Estimated Time per Response: 30 minutes for an Annual Processed Products Report and 15 minutes for a Fishery Products Report Fish Meal and Oil, Monthly.

Estimated Total Annual Burden Hours: 440.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 8, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–08569 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC597

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an exempted fishing permit application contains all of the required information and warrants further consideration. This exempted fishing permit would facilitate compensation fishing under the monkfish Research Set-Aside Program by exempting vessels from monkfish days-at-sea possession limits. The compensation fishing is in support of a 2012 Monkfish Research Set-Aside project that is attempting to validate monkfish aging methods. The project is being conducted by the University of Massachusetts, Dartmouth, School for Marine Science and Technology.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before April 29, 2013.

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

- *Email: nero.efp@noaa.gov.* Include in the subject line ''Comments on SMAST Monkfish RSA EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on SMAST monkfish RSA EFP.''
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, 978–281–9177.

SUPPLEMENTARY INFORMATION: To conduct compensation fishing in support of the project, SMAST initially submitted an application for an EFP on April 20, 2012, requesting exemptions from the monkfish DAS possession limits. However, due to complications resulting from the listing of Atlantic sturgeon under the Endangered Species Act, an EFP was not issued. The applicant has since modified their EFP application by stating that vessels would only fish under the EFP in depths greater than 50 fathoms (91 m), where Atlantic sturgeon interactions are extremely rare. The revised application was submitted on March 18, 2013. Twenty-five vessels have been identified by the applicant to conduct monkfish compensation fishing under the requested EFP. The vessels conducting the compensation fishing would use standard commercial gillnet gear.

Monkfish EFPs that waive possession limits were first issued in 2007, and each year thereafter through 2011. The EFPs were approved to increase operational efficiency and to optimize research funds generated from research set-aside (RSA) DAS. To ensure that the amount of monkfish harvested by vessels operating under the EFPs was similar to the amount of monkfish that was anticipated to be harvested under the 500 RSA DAS set-aside by the New England and Mid-Atlantic Fishery Management Councils, NMFS associated 3,600 lb (1,633 kg) of whole monkfish per RSA DAS. This amount of monkfish was the equivalent of a double

possession limit of Permit Category A and C vessels fishing in the SFMA. This was deemed a reasonable approximation because it is reflective of how the standard monkfish commercial fishery operates. Further, it is likely that RSA grant recipients would optimize their RSA DAS award by utilizing this possession limit.

Prior to the submission of SMAST's RSA proposal, Amendment 5 to the Monkfish FMP was implemented. This adjusted the tail-to-whole-weight conversion factor from 3.32 to 2.91, which essentially reduced the whole weight possession limits. However, SMAST has noted that, because its RSA proposal and budget were developed in a manner that was consistent with previously approved EFPs, the request is justified. Therefore, if approved, participating vessels could use up to 129 DAS, or up to 464,400 lb (210,648.3 kg) of whole monkfish under the EFP, whichever limit is reached first.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: April 9, 2013.

Kara Meckley,

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

[FR Doc. 2013–08659 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC618

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: Public hearing for the Mid-Atlantic Fishery Management Council's (Council) Omnibus Recreational Fishery Accountability Amendment.

DATES: Written comments must be received on or before 5 p.m., EST, on May 15, 2013. The public hearings will be held on April 29, 30, May 1, 2, and 3, 2013 during this comment period. All public hearings will be held from 7 p.m. until 9 p.m. For details on hearing times and locations, see **ADDRESSES**.

ADDRESSES: The hearings will be held, in chronological order, as follows: April 29, 2013 at the Crowne Plaza at the Crossings, 801 Greenwich Ave., Warwick, RI 02886, (401) 732–6000; April 30, 2013 at Hyatt Place Long Island/East End, 431 East Main St., Riverhead, NY 11901, (631) 574–8008; May 1 at the Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050, (609) 481–6100, May 2 at the Clarion Fontainebleau Hotel, 10100 Coastal Highway, Ocean City, MD 21842, (800) 638–2100, and May 3 at the Hilton Virginia Beach Oceanfront, 3001 Atlantic Ave., Virginia Beach, VA 23451, (757) 213–3000. Written comments should be mailed to the Council office at the address below and marked ''RECREATIONAL AM AMENDMENT.'' The public hearing document can be obtained by contacting the Council at the address below or at the Council's Web site: *http://www.mafmc.org*.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: If approved, the Omnibus Recreational Accountability Amendment (AM) will modify accountability measures for the recreational Atlantic mackerel, bluefish, summer flounder, scup, and black sea bass fisheries. The Amendment evaluates AMs that are alternatives to the current pound-for-pound reductions and in-season closures. The Amendment considers AMs that take into account the biological cost of a catch overage and the generally uncertain nature of recreational fishery catch estimates and management controls. A draft Environmental Assessment (EA) that analyzes the proposed actions is available by contacting the Council office and at the Council's Web site: *http://www.mafmc.org* after April 15, 2013.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: April 9, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–08627 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC619

North Pacific Fishery Management Council (NPFMC); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Bering Sea Aleutian Islands (BSAI) Crab Plan Team (CPT) will meet in Anchorage, AK.

DATES: The meeting will be held April 30 through May 3, 2013, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Clarion Suites, 1110 West 8th Avenue, Heritage Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Plan Team meeting agenda includes preparation of the Economic Stock Assessment Fishery Evaluation (SAFE) report, and recommendations of Acceptable Biological Catch (ABC), and Overfishing level (OFL) for 4 BSAI crab stocks—Aleutian Island Golden King Crab (AIGCK), Norton Sound Red King Crab (NSRKC), Pribilof Island Golden King Crab (PIGKC), Adak red king crab. Model update and reviews for Snow Crab, Tanner Crab, Saint Matthew Blue King Crab, Bristol Bay Red King Crab (BBRKC). See full detailed agenda on Council Web site.

The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those

issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

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: April 9, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–08628 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC616

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held via webinar on Tuesday, April 30, 2013, from 1 p.m. until 5 p.m.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details on webinar registration and telephone-only connection details are available at: *http://www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: This meeting will include a briefing on the 2013 surfclam benchmark stock assessment and ocean quahog stock assessment update; review information relevant to multi-year ABC recommendations for Illex squid, long-finned squid, and Atlantic mackerel; and review updated assessment information for Atlantic butterfish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: April 9, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–08625 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC614

Marine Mammals; File No. 17996

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Silverback Films Ltd, 59 Cotham Hill, Cotham, Bristol, BS6 6JR, United Kingdom, has applied in due form for a permit to conduct commercial or educational photography of bottlenose dolphins (*Tursiops truncatus*).

DATES: Written, telefaxed, or email comments must be received on or before May 13, 2013.

ADDRESSES: These documents are available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Rosa L. González or Kristy Beard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild.

Silverback Films Ltd requests a two-year photography permit to film bottlenose dolphin strand-feeding events in the estuaries and creeks of Bull Creek and around Hilton Head, South Carolina. Filming would be conducted from a small boat and from a helicopter. A maximum of 500 dolphins, annually, would be approached. Filming would occur over one (or two if needed) sessions of three to four weeks each and be completed by October 2014. Footage would be used in a seven-part television series, The Hunt, an educational series on predation strategy and predator-prey dynamics for the British Broadcasting Company.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 8, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–08571 Filed 4–11–13; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and a service previously furnished by such agencies.

Comments Must Be Received on Or Before: 5/13/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clarke 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 USC 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 services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Operation of Supply Support Activity Service, 733d Logistics Readiness Division, Building 1608 and 1610, Patch Road, Joint Base Langley-Eustis, VA.
NPA: Skookum Educational Programs, Bremerton, WA
Contracting Activity: Dept of the Air Force, FA4800 633 CONS LGCP, Langley AFB, VA
Service Type/Location: Warehousing Service, Fort Hood II Commissary, Warrior Way Building 85020, Fort Hood, TX.
NPA: CW Resources, Inc., New Britain, CT
Contracting Activity: Defense Commissaryagency (DECA), Fort Lee, VA

Deletions

The following products and service are proposed for deletion from the Procurement List:

Products

NSN: 8415–00–NIB–0012—Sweatshirt, USMA, Hooded, Gray, Large
NSN: 8415–00–NIB–0013—Sweatshirt, USMA, Hooded, Gray, X-Large
NSN: 8415–00–NIB–0014—Sweatshirt, USMA, Hooded, Gray, Medium
NSN: 8415–00–NIB–0015—Sweatshirt, USMA, Crewneck, Gray, Large
NSN: 8415–00–NIB–0016—Sweatshirt, USMA, Crewneck, Gray, X-Large
NSN: 8415–00–NIB–0017—Sweatshirt, USMA, Crewneck, Gray, Medium
NSN: 8415–00–NIB–0018—Sweatpants, USMA, Gray, Large
NSN: 8415–00–NIB–0019—Sweatpants, USMA, Gray, X-Large
NSN: 8415–00–NIB–0020—Sweatpants, USMA, Gray, Medium
NPA: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: W40M Natl Region Contract OFC, Fort Belvoir, VA
NSN: 7930–00–664–6910—Glass Cleaner, Bio-based, Heavy Duty, 8 oz.
NPA: Lighthouse for the Blind of Houston, Houston, TX
Contracting Activity: General Services Administration, Fort Worth, TX

Safety-Walk, Tapes & Treads—660 Brown General Purpose

NSN: 7220–00–NIB–0050
NSN: 7220–00–NIB–0051
NSN: 7220–00–NIB–0052
NPA: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: General Services Administration, New York, NY

Service

Service Type/Location: Receiving, Shipping, Handling & Custodial Service, Brunswick Naval Air Station, 35 Dominion Avenue, Building 335, Topsham, ME.
NPA: Pathways, Inc., Auburn, ME
Contracting Activity: Defense Commissaryagency (DECA), Fort Lee, VA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–08655 Filed 4–11–13; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition And Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and Deletions from the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 5/13/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clarke 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:

Addition

On 2/22/2013 (78 FR 12296–12297), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is 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 organization that will provide the service to the Government.

2. The action will result in authorizing a small entity to provide the 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 service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Laundry Service, Weed Army Community Hospital, 2nd Street, Building 166, Fort Irwin, CA
NPA: Job Options, Inc., San Diego, CA
Contracting Activity: DEPT OF THE ARMY, W40M WESTERN RGNL CNTRG OFC, TACOMA, WA

Deletions

On 3/23/2012 (77 FR 17035); 3/30/2012 (77 FR 19263); 4/6/2012 (77 FR 20795); 4/27/2012 (77 FR 25146–25147); 5/11/2012 (77 FR 27737); 6/29/2012 (77 FR 38775–38776); 7/9/2012 (77 FR 40344–40345); 9/21/2012 (77 FR 58528–58529); 10/12/2012 (77 FR 62219–62220); 10/19/2012 (77 FR 64326–64327); 10/26/2012 (77 FR 65365); 11/2/2012 (77 FR 66181); 11/16/2012 (77 FR 68737–68738); 12/7/2012 (77 FR 73025–73026); 12/21/2012 (77 FR 75616); 1/11/2013 (78 FR 2378); and 3/1/2013 (78 FR 13868–13869), 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 services 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 services 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 services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN: 8920–00–823–7223—Cake Mix
NSN: 8920–00–823–7221—Cake Mix
NSN: 8920–01–250–9522—Pancake Mix
NPA: There was no other nonprofit agency authorized to furnish the products.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

Towel, Machinery Wiping

NSN: 7920–00–NIB–0046
NPA: East Texas Lighthouse for the Blind, Tyler, TX
Contracting Activity: General Services Administration, Fort Worth, TX
NSN: M.R. 552—Nitrile Disposable Gloves
NSN: M.R. 553—Latex Disposable Gloves
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY
Contracting Activity: Defense Commissary Agency, Fort Lee, VA

Corrosion-Preventive Compound

NSN: 8030–00–NIB–0005—Lubricant, 5-in-1 Penetrating Multipurpose oil, Biobased, Aerosol, 18 oz. net.
NPA: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: General Services Administration, Tools Acquisition Division I, Kansas City, MO
NSN: 7520–01–238–0978—Flourescent Highlighter—Blue
NSN: 7520–01–238–0979—Flourescent Highlighter—Green
NSN: 7520–01–553–8140—Highlighters, Free-Ink, Flat
NPA: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: General Services Administration, New York, NY

Computer Accessories

NSN: 7045–01–483–7840—Screen, Anti-Glare/Radiation, Beige, 14″ to 17″ Monitors
NPA: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: General Services Administration, New York, NY

Paper, Mimeograph and Duplicating

NSN: 7530–00–285–3070
NSN: 7530–00–253–0986
NSN: 7530–00–286–6178
NSN: 7530–01–072–2534
NSN: 7530–00–234–7169
NSN: 7530–01–037–5555
NSN: 7530–01–037–5556
NPA: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: General Services Administration, New York, NY

Blanket Set, Bed

NSN: 6545–00–911–1300
NPA: Ontario County Chapter, NYSARC, Inc., Canandaigua, NY
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

Bakery Mix, Biscuit Type

NSN: 8920–00–NSH–0001—Regular
NPA: Transylvania Vocational Services, Inc., Brevard, NC
Contracting Activities: Farm Service Agency, Agriculture Stabilization and Conservation Service, Kansas City, MO, Kansas City Acquisition Branch, Kansas City, MO

Pencil, Woodcase, Rubberized

NSN: 7510–01–425–6766
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: General Services Administration, New York, NY

Handle, Mop

NSN: 7920–00–246–0930
NPA: Industries of the Blind, Inc., Greensboro, NC
Contracting Activity: General Services Administration, Fort Worth, TX

Sponge, Surgical, Gauze, Compressed

NSN: 6510–00–926–9082
NPA: Elwyn, Inc., Aston, PA
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

SKILCRAFT SAVVY Unreal Spot Remover

NSN: 7930–01–517–6196—55 Gallon
NSN: 7930–01–517–6194—32 oz.
NSN: 7930–01–517–2728—5 Gallon
NSN: 7930–01–517–6195—1 Gallon
NPA: Susquehanna Association for the Blind and Vision Impaired, Lancaster, PA
Contracting Activity: General Services Administration, New York, NY

Calculator or Cash Register Paper

NSN: 7530–01–590–7109—Roll, Thermal Paper, 3⅛ in x 270 ft, White
NSN: 7530–01–590–7111—Roll, Thermal Paper, 3⅛ in x 230 ft, White
NPA: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: General Services Administration, New York, NY

VuRyte—VuRyser Ergonomic Computer Workstation

NSN: 7520–01–443–4902
NSN: 7520–01–453–6246
NSN: 7520–01–453–6247

VuRyte Document Holder

NSN: 7520–01–461–1552
NPA: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: General Services Administration, New York, NY

Presentation Sheets, ''SmartChart''

NSN: 7520–01–483–8980—Refill Roll
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: General Services Administration, New York, NY

Medical Equipment Set, Laboratory, Field

NSN: 6545–01–191–8970
NPA: Ontario County Chapter, NYSARC, Inc., Canandaigua, NY
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

Pad, Writing Paper (Easel)

NSN: 7530–00–NIB–0306
NPA: There was no other nonprofit agency authorized to furnish the products.
Contracting Activity: General Services Administration, New York, NY

Nonfat Dry Milk

NSN: 8910–00–NSH–0001—Nonfat Dry Milk
NPAs: CW Resources, Inc., New Britain, CT Transylvania Vocational Services, Inc.,

Brevard, NC, Knox County Association for Retarded Citizens, Inc., Vincennes, IN
Contracting Activity: Foreign Service Operations International Services Division, Washington, DC

Calendars

NSN: 7510–01–545–3776—Calendar Pad, Type I, 2011
NSN: 7530–01–573–4866—DAYMAX System, LE, 2011, Navy
NSN: 7530–01–573–4866L—DAYMAX System, LE, 2011, Navy w/Logo
NSN: 7510–01–545–3784—Calendar Pad, Type II, 2011
NSN: 7510–01–573–4835—DAYMAX, IE/LE Month at a View, 2011, 3-hole
NSN: 7510–01–573–4839—DAYMAX, IE/LE Week at a View, 2011, 3-hole
NSN: 7510–01–573–4840—DAYMAX, IE/LE Day at a View, 2011, 3-hole
NSN: 7510–01–573–4841—DAYMAX, GLE Day at a View, 2011, 7-hole
NSN: 7510–01–573–4842—DAYMAX, GLE Month at a View, 2011, 7-hole
NSN: 7510–01–573–4843—DAYMAX, Tabbed Monthly, 2011, 3-hole
NSN: 7510–01–573–4844—DAYMAX, Tabbed Monthly, 2011, 7-hole
NSN: 7510–01–573–4847—DAYMAX, GLE Week at a View, 2011, 7-hole
NSN: 7510–01–573–4856—DAYMAX, Tabbed Monthly, 2011, 6-hole
NSN: 7530–01–573–4836—DAYMAX System, DOD Planner, 2011
NSN: 7530–01–573–4837—DAYMAX System, Camouflage Planner, 2011
NSN: 7530–01–573–4836L—DAYMAX System, DOD Planner w/Logo, 2011
NSN: 7530–01–573–4837L—DAYMAX System, Camouflage Planner w/Logo, 2011
NSN: 7530–01–573–4848L—DAYMAX System, JR Version, 2011, Black w/Logo
NSN: 7530–01–573–4848—DAYMAX System, JR Version, 2011, Black
NSN: 7530–01–573–4849—DAYMAX System, GLE, 2011, Black
NSN: 7530–01–573–4849L—DAYMAX System, GLE, 2011, Black w/Logo
NSN: 7530–01–573–4850L—DAYMAX System, LE, 2011, Burgundy w/Logo
NSN: 7530–01–573–4851L—DAYMAX System, GLE, 2011, Navy w/Logo
NSN: 7530–01–573–4853L—DAYMAX System, JR Version, 2011, Navy w/Logo
NSN: 7530–01–573–4854L—DAYMAX System, GLE, 2011, Burgundy w/Logo
NSN: 7530–01–573–4855L—DAYMAX System, Desert, Camouflage Planner, 2011 w/Logo
NSN: 7530–01–573–4858L—DAYMAX System, JR Version, 2011, Burgundy
NSN: 7530–01–573–4860—DAYMAX System, IE, 2011, Black
NSN: 7530–01–573–4860L—DAYMAX System, IE, 2011, Black w/Logo
NSN: 7530–01–573–4861L—DAYMAX System, IE, 2011, Navy w/Logo
NSN: 7530–01–573–4864L—DAYMAX System, IE, 2011, Burgundy w/Logo
NSN: 7530–01–573–4865L—DAYMAX System, LE, 2011, Black w/Logo
NSN: 7530–01–573–4864—DAYMAX System, IE, 2011, Burgundy
NSN: 7530–01–573–4865—DAYMAX System, LE, 2011, Black
NSN: 7530–01–573–4861—DAYMAX System, IE, 2011, Navy
NSN: 7530–01–573–4858—DAYMAX System, JR Version, 2011, Burgundy
NSN: 7530–01–573–4855—DAYMAX System, Desert, Camouflage Planner, 2011
NSN: 7530–01–573–4853—DAYMAX System, JR Version, 2011, Navy
NSN: 7530–01–573–4854—DAYMAX System, GLE, 2011, Burgundy
NSN: 7530–01–573–4851—DAYMAX System, GLE, 2011, Navy
NSN: 7530–01–573–4850—DAYMAX System, LE, 2011, Burgundy
NSN: 7530–01–545–3747—Appointment Book Refill, 2011
NSN: 7530–01–564–6052L—JR Deluxe Time Management System-JR Deluxe Version
NSN: 7530–01–564–6052—JR Deluxe Time Management System-JR Deluxe Version
NSN: 7530–01–564–6051L—JR Deluxe Time Management System-JR Deluxe Version
NSN: 7530–01–564–6051—JR Deluxe Time Management System-JR Deluxe Version
NSN: 7530–01–545–3741—Appt. Book Refill, 2010
NSN: 7530–01–537–7869L—DAYMAX System, Woodland Camouflage Planner, 2010 w/Logo
NSN: 7530–01–537–7869—DAYMAX System, Woodland, Camouflage Planner, 2010
NSN: 7530–01–537–7865L—DAYMAX System, DOD Planner, 2010 w/Logo
NSN: 7530–01–537–7865—DAYMAX System, DOD Planner, 2010
NSN: 7530–01–537–7862L—DAYMAX System, Desert, Camouflage Planner, 2010 w/Logo
NSN: 7530–01–537–7862—DAYMAX System, Desert, Camouflage Planner, 2010
NSN: 7530–01–537–7860L—DAYMAX System, GLE, 2010, Burgundy w/Logo
NSN: 7530–01–537–7860—DAYMAX System, GLE, 2010, Burgundy
NSN: 7530–01–537–7855L—DAYMAX System, GLE, 2010, Navy w/Logo
NSN: 7530–01–537–7855—DAYMAX System, GLE, 2010, Navy
NSN: 7530–01–537–7851L—DAYMAX System, GLE, 2010, Black w/Logo
NSN: 7530–01–537–7851—DAYMAX System, GLE, 2010, Black
NSN: 7530–01–537–7836L—DAYMAX System, LE, 2010, Burgundy w/Logo
NSN: 7530–01–537–7836—DAYMAX System, LE, 2010, Burgundy
NSN: 7530–01–537–7835L—DAYMAX System, LE, 2010, Navy w/Logo
NSN: 7530–01–537–7835—DAYMAX System, LE, 2010, Navy
NSN: 7530–01–537–7834L—DAYMAX System, LE, 2010, Black w/Logo
NSN: 7530–01–537–7834—DAYMAX System, LE, 2010, Black
NSN: 7530–01–537–7833L—DAYMAX System, IE, 2010, Navy w/Logo
NSN: 7530–01–537–7833—DAYMAX System, IE, 2010, Navy
NSN: 7530–01–537–7832L—DAYMAX System, JR Version, 2010, Navy w/Logo
NSN: 7530–01–537–7832—DAYMAX System, JR Version, 2010, Navy
NSN: 7530–01–537–7831L—DAYMAX System, IE, 2010, Burgundy w/Logo
NSN: 7530–01–537–7831—DAYMAX System, IE, 2010, Burgundy
NSN: 7530–01–537–7830L—DAYMAX System, IE, 2010, Black w/Logo
NSN: 7530–01–537–7830—DAYMAX System, IE, 2010, Black
NSN: 7530–01–537–7829L—DAYMAX System, JR Version, 2010, Black w/Logo
NSN: 7530–01–537–7829—DAYMAX System, JR Version, 2010, Black
NSN: 7530–01–537–7828L—DAYMAX System, JR Version, 2010, Burgundy w/Logo
NSN: 7530–01–537–7828—DAYMAX System, JR Version, 2010, Burgundy
NSN: 7510–01–545–3781—Calendar Pad, Type 2, 2010
NSN: 7510–01–537–7880—DAYMAX, GLE Day at a View, 2010, 7-hole
NSN: 7510–01–537–7878—DAYMAX, Tabbed Monthly, 2010, 7-hole
NSN: 7510–01–537–7877—DAYMAX, Tabbed Monthly, 2010, 3-hole
NSN: 7510–01–537–7866—DAYMAX, IE/LE Month at a View, 2010, 3-hole
NSN: 7510–01–537–7872—DAYMAX, IE/LE Day at a View, 2010, 3-hole
NSN: 7510–01–537–7876—DAYMAX, GLE Week at a View, 2010, 7-hole
NSN: 7510–01–537–7874—DAYMAX, GLE Month at a View, 2010, 7-hole
NSN: 7510–01–537–7871—DAYMAX, IE/LE Week at a View, 2010, 3-hole

JR Deluxe Time Management System

NSN: 7510–01–564–6053—JR Tabbed Month Divider
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, PA
Contracting Activity: General Services Administration, New York, NY

Services

Service Type/Location: Janitorial/Custodial—Naval Reserve Center, Kierney, NJ
NPA: The First Occupational Center of New Jersey, Orange, NJ
Contracting Activity: Dept of the Navy, US Fleet Forces Command, Norfolk, VA
Service Type/Location: Janitorial/Custodial—*South Weymouth Naval Air Station:* Caretaker Site Office, Naval Air Station, South Weymouth, MA
NPA: Community Workshops, Inc., Boston, MA
Contracting Activity: Dept of the Navy, Naval FAC Engineering CMD MID LANT, Norfolk, VA
Service Type/Location: Janitorial/Custodial—*Redden U.S. Federal Courthouse:* Fleet Management Center, 310 West 6th Street, Medford, OR
NPA: Pathway Enterprises, Inc., Ashland, OR
Contracting Activity: Public Buildings Service, GSA/PBS, Auburn, WA
Service Type/Location: Shelf Stocking & Custodial, Fort Stewart, Fort Stewart, GA
NPA: There was no other nonprofit agency authorized to furnish the service.
Contracting Activity: Defense Commissary Agency, Fort Lee, VA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–08660 Filed 4–11–13; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Public Availability of Fiscal Year 2012 Service Contract Inventory

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is publishing this notice to advise the public of the availability of CFTC's Fiscal Year (FY) 2012 Service Contract Inventory.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Service Contract Inventory should be directed to Sonda R. Owens, Contracting Officer, in the Financial Management Branch, Procurement Section, at 202–418–5182 or *sowens@cftc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117, 123 Stat. 3034, CFTC is notifying the public of the availability of the agency's FY 2012 Service Contract Inventory. CFTC has posted its inventory and a summary of the inventory on the agency's Web site at the following link: *http://www.cftc.gov/About/CFTCReports/index.htm.*

This inventory provides information on service contract actions over $25,000 that were made in FY 2012. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, by the Office of Management and Budget, Office of Federal Procurement Policy (OFPP), and the revised guidance issued on November 8, 2011. The November 5, 2010, OFPP guidance is available on the Internet at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.*

Dated: April 8, 2013.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

[FR Doc. 2013–08558 Filed 4–11–13; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Finding of No Significant Impact and Final Programmatic Environmental Assessment for Army 2020 Force Structure Realignment

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The Department of the Army announces the availability of the Finding of No Significant Impact (FNSI) for implementation of force structure realignment to reduce the Army active duty end-strength from 562,000 at the end of Fiscal Year (FY) 2012 to 490,000 by FY 2020. After reviewing the Final Programmatic Environmental Assessment for Army 2020 Force Structure Realignment (PEA), supporting studies, and comments received during the public review period, the Deputy Chief of Staff of the Army, G–3/5/7 has signed the FNSI that concluded there will be no significant environmental impacts, other than socioeconomic, likely to result from implementation of either of the analyzed alternatives. Although there could be significant socioeconomic impacts, these alone do not require the preparation of an Environmental Impact Statement; therefore, one will not be prepared.

An electronic version of the FNSI and PEA is available for download at *http://aec.army.mil/usaec/nepa/topics00.html.*

FOR FURTHER INFORMATION CONTACT: (210) 466–1590 or email: *USARMY.JBSA.AEC.MBX@mail.mil.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–08615 Filed 4–11–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0045]

Agency Information Collection Activities; Comment Request; Generic Clearance for Federal Student Aid Customer Satisfaction Surveys and Focus Groups Master Plan

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 11, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0045 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Generic Clearance for Federal Student Aid Customer Satisfaction Surveys and Focus Groups Master Plan.

OMB Control Number: 1845–0045.

Type of Review: a revision of an existing information collection.

Respondents/Affected Public: individuals or households.

Total Estimated Number of Annual Responses: 65,300.

Total Estimated Number of Annual Burden Hours: 14,458.

Abstract: The Higher Education Amendments of 1998 established Federal Student Aid (FSA) as the first Performance-Based Organization (PBO). One purpose of the PBO is to improve service to students and other participants in the student financial assistance programs authorized under title IV, including making those programs more understandable to students and their parents. To do that, FSA has committed to ensuring that all people receive service that matches or exceeds the best service available in the private sector. The legislation requirements establish an ongoing need for FSA to be engaged in an interactive process of collecting information and using it to improve program services and processes.

Dated: April 8, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–08537 Filed 4–11–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2601–021]

Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan.

b. *Project No:* 2601–021.

c. *Date Filed:* August 13, 2012 and supplemented January 10, March 26, and April 4, 2013.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Bryson Hydroelectric Project.

f. *Location:* The Bryson Hydroelectric Project is located on the Oconaluftee River in Swain County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Dennis Whitaker, Duke Energy—Lake Services, 526 S. Church St., Charlotte, NC 28202, (704) 382–1594.

i. *FERC Contact:* Tara Perry at (202) 502–6546, or email: *tara.perry@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* May 9, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2601–021) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As required by article 407 of the July 22, 2011 license, Duke Energy Carolinas, LLC requests Commission approval of a proposed shoreline management plan (SMP) for the project. The SMP defines shoreline management classifications for the reservoir shoreline within the project boundary, identifies allowable and prohibited uses within the shoreline areas, and describes the shoreline use permitting process.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–2601) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08588 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2603–024]

Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan.

b. *Project No:* 2603–024.

c. *Date Filed:* August 13, 2012 and supplemented January 10, March 26, and April 4, 2013.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Franklin Hydroelectric Project.

f. *Location:* The Franklin Hydroelectric Project is located on the Little Tennessee River at River Mile 113.1, in Macon County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Dennis Whitaker, Duke Energy—Lake Services, 526 S. Church St., Charlotte, NC, 28202, (704) 382–1594.

i. *FERC Contact:* Mark Carter at (678) 245–3083, or email: *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 9, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2603–024) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As required by article 408 of the September 7, 2011 license, Duke Energy Carolinas, LLC requests Commission approval of a proposed shoreline management plan (SMP) for the project. The SMP defines shoreline management classifications for the reservoir shoreline within the project boundary, identifies allowable and prohibited uses within the shoreline areas, and describes the shoreline use permitting process.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–2603) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08589 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12790–002]

Andrew Peklo III; Notice of Application Accepted for Filing, Intent To Waive Scoping, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection. An application for exemption from licensing was filed on February 16, 2011; however, on January 17, 2013, the applicant converted its application for exemption from licensing to an application for license. This notice refers to the docket for the application for license (P–12790–002). All stakeholder comments, motions to intervene, and protests filed on the proceeding for the application for exemption from licensing (P–12790–001) are incorporated into the docket for the application for license.

a. *Type of Application:* Minor License.

b. *Project No.:* 12790–002.

c. *Date filed:* January 17, 2013.

d. *Applicant:* Andrew Peklo III.

e. *Name of Project:* Pomperaug Hydro Project.

f. *Location:* On the Pomperaug River, in the Town of Woodbury, Litchfield County, Connecticut. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Federal Power Act (FPA) 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Andrew Peklo III, 29 Pomperaug Road, Woodbury, CT 06798, (203) 263–4566, *themill@charter.net*.

i. *FERC Contact:* Steve Kartalia, (202) 502–6131 or *Stephen.kartalia@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 k 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. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, prescriptions, and requests for cooperating agency status:* Due to the previous opportunities to file motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions under P–12970–001, the 60-day timeframe specified in 18 CFR 4.34(b) for filing comments (including mandatory and recommended terms and conditions or prescriptions) on the application for license is shortened. Motions to intervene and protests, comments, terms and conditions, recommendations, prescriptions, and requests for cooperating agency status on the license application are due 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice. Comments, interventions, and protests filed on the exemption from licensing proceeding (P–12790–001) do not need to be refiled under P–12970–002. However, conditions filed under section 30(c) of the FPA will be considered under section 10(a) of the FPA unless they are withdrawn or superseded by conditions appropriate for an application for license.

All new documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. The application for license has been accepted for filing and is now ready for environmental analysis.

m. *The Pomperaug Hydro Project would consist of:* (1) The existing 90-foot-long, 15-foot-high Pomperaug River dam equipped with three existing gates; (2) an existing 3-acre impoundment with a normal water surface elevation of 226.43 feet above mean sea level; (3) an existing 40-foot-long, 42- to 50-inch-diameter penstock; and (4) an existing powerhouse integral to the dam, containing one new 76-kilowatt turbine generating unit. Project power would be transmitted through a new 35-foot-long, 208-volt underground transmission line. The proposed project is estimated to generate an average of 300,000 kilowatt-hours annually.

The applicant proposes to: (1) Rehabilitate the existing gates and construct a new intake structure; (2) install the new turbine generating unit; (3) construct new fish and eel passage facilities; and (4) bury the new transmission line. The application for license does not include any proposed modifications to the crest elevation of the dam or the water surface elevation of the impoundment.

n. Due to the applicant's close coordination with federal and state agencies during the preparation of the application, completed studies, and prior opportunities for public and agency comment, we intend to waive scoping. The issues that need to be addressed in Commission staff's environmental assessment (EA) have been adequately identified through comments filed on P–12970–001 and comments made during a January 18, 2012, public meeting and site visit and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project construction and operation on geology and soils, aquatic resources, terrestrial resources, recreation, land use, aesthetic resources, and cultural resources.

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.

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.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the deadline specified in item k above. Comments, interventions, and protests filed on the exemption from licensing proceeding (P–12790–001) do not need to be refiled under P–12970–002.

All filings must: (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''REQUEST FOR COOPERATING AGENCY STATUS,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant.

Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

p. Public notice of the filing of the initial development application was made under P–12970–001 and established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

q. The license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

r. *Procedural schedule:* The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of the availability of the EA.	August 2013.

Dated: April 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08584 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11402–074]

City of Crystal Falls, MI; Notice of Application for Temporary Variance of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary variance of license.

b. *Project No:* 11402–074.

c. *Date Filed:* March 11, 2013.

d. *Applicant:* City of Crystal Falls, MI.

e. *Name of Project:* Crystal Falls Project.

f. *Location:* The project is located on the Paint River in the City of Crystal Falls, Iron County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Dave Graff, City of Crystal Falls, 401 Superior Avenue, Crystal Falls, Mi 49920, (906) 875–6650.

i. *FERC Contact:* Rebecca Martin, (202) 502–6012, *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 3, 2013.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–11402–074) on any comments or motions filed.

k. *Description of Application:* The City of Crystal Falls is requesting a variance of articles 401, 402, and 405 of its license. The City of Crystal Falls intends to complete non-safety related maintenance at its low hazard hydroelectric dam in the summer of 2013. In order to complete the project, drawdown of the impoundment would begin on June 27, 2013 at a rate of 1.0 foot per day for the first four days then the drawdown rate would switch to 1.5 feet per day until a 20 foot drawdown is reached. The impoundment would be filled as the inflow allows, while maintaining 150 cubic feet per second outflow. The reservoir would be filled no later than November 1, 2013. During the drawdown the City will conduct surveys for stranded mussels and fish. Additionally, recreational access will be limited to canoes, kayaks, and small boats during the drawdown.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–11402) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this

application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: April 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08595 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 618–195]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 618–195.

c. *Date Filed:* March 21, 2013.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Jordan Dam Project.

f. *Location:* The project is located on the Coosa River in Chilton, Coosa, and Elmore Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James F. Crew, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291–8180, (205) 257–4265.

i. *FERC Contact:* Christopher Chaney, (202) 502–6778, *christopher.chaney@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* April 18, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Alabama Power Company seeks approval to replace the Unit 4 turbine at the Jordan Dam Project. Specifically, the licensee proposes the following work: complete turbine replacement, wicket gate system rehabilitation or replacement, gate stem bushing replacement, turbine and generator bearing refurbishment, and related component replacement. The turbine unit modifications are expected to increase the turbine rating by approximately 3 megawatts (MW), as well as increase efficiency and annual generation; however, since the unit is generator-limited, the installed capacity will not change. The unit replacement would result in a maximum hydraulic capacity increase of approximately 4.6 percent for Unit 4, and 1.2 percent for the Project. No change in project operations is proposed.

l. 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 (P–618–195) 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08594 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–23–000.

Applicants: RE Rosamond One LLC.

Description: RE Rosamond One LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/3/13.

Accession Number: 20130403–5061.

Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: EG13–24–000.

Applicants: RE Rosamond Two LLC.

Description: RE Rosamond Two LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/3/13.

Accession Number: 20130403–5062.

Comments Due: 5 p.m. ET 4/24/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–872–001.
Applicants: California Independent System Operator Corporation.
Description: 2013–04–03 Market-Based Rate Authority Suspension Compliance to be effective 4/1/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5114.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1239–000.
Applicants: Alta Wind III, LLC.
Description: First Revised MBR Tariff to be effective 4/4/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5086.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1240–000.
Applicants: Alta Wind II, LLC.
Description: First Revised MBR Tariff to be effective 4/4/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5087.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1241–000.
Applicants: Alta Wind IV, LLC.
Description: First Revised MBR Tariff to be effective 4/4/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5088.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1242–000.
Applicants: Alta Wind V, LLC.
Description: First Revised MBR Tariff to be effective 4/4/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5089.
Comments Due: 5 p.m. ET 4/24/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 4, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–08637 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP12–1013–003.
Applicants: Ruby Pipeline, L.L.C.
Description: Revised Compliance in Docket No. RP12–1013 to be effective 5/15/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5031.
Comments Due: 5 p.m. ET 4/15/13.

Docket Numbers: RP13–762–001.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Negotiated Rates—Momentum—Liberty GA—AMENDMENT to be effective 4/1/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5117.
Comments Due: 5 p.m. ET 4/15/13.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated April 4, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–08636 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–779–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: April 1, 2013, K410135 release to K660989 to be effective 4/1/2013.
Filed Date: 4/4/13.
Accession Number: 20130404–5029.
Comments Due: 5 p.m. ET 4/16/13.

Docket Numbers: RP13–780–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—Volume 1A Abandonment of TL–404 to be effective 5/6/2013.
Filed Date: 4/4/13.
Accession Number: 20130404–5065.
Comments Due: 5 p.m. ET 4/16/13.

Docket Numbers: RP13–781–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Park and Loan Service Revisions to be effective 5/6/2013.
Filed Date: 4/4/13.
Accession Number: 20130404–5071.
Comments Due: 5 p.m. ET 4/16/13.

Docket Numbers: RP13–782–000.
Applicants: Quicksilver Resources Inc.
Description: Petition for Temporary Waivers of Quicksilver Resources Inc. of Capacity Release Regulation and Related Pipeline Tariff Provisions.
Filed Date: 4/4/13.
Accession Number: 20130404–5144.
Comments Due: 5 p.m. ET 4/16/13.

Docket Numbers: RP13–783–000.
Applicants: Steuben Gas Storage Company.
Description: Steuben Gas Storage Company—Cancellation of FERC Gas Tariff to be effective 4/5/2013.
Filed Date: 4/5/13.
Accession Number: 20130405–5045.
Comments Due: 5 p.m. ET 4/17/13.

Docket Numbers: RP13–784–000.
Applicants: Elba Express Company, L.L.C.
Description: Negotiated and Non-Conforming Rates Filing to be effective 4/1/2013.
Filed Date: 4/5/13.
Accession Number: 20130405–5050.
Comments Due: 5 p.m. ET 4/17/13.

Docket Numbers: RP13–785–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Part 5.0 Update to be effective 5/6/2013.
Filed Date: 4/5/13.
Accession Number: 20130405–5060.
Comments Due: 5 p.m. ET 4/17/13.

Docket Numbers: RP13–786–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Non-Conforming Agreements Filing to be effective 6/1/2013.
Filed Date: 4/5/13.
Accession Number: 20130405–5124.
Comments Due: 5 p.m. ET 4/17/13.

Docket Numbers: RP13–788–000.
Applicants: Texas Gas Transmission, LLC.
Description: Superseding Neg Rate Agmt Filing (NextEra 32738) to be effective 2/15/2013.
Filed Date: 4/8/13.
Accession Number: 20130408–5013.
Comments Due: 5 p.m. ET 4/22/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 8, 2013.

Nathaniel J. Davis, Sr.

Deputy Secretary

[FR Doc. 2013–08639 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2669–007; ER10–2670–007; ER10–2673–007; ER10–2253–008; ER10–3319–009; ER10–2674–007; ER10–2627–008; ER10–2629–009; ER10–1547–007; ER10–1546–009; ER10–2676–007: ER10–2636–008; ER10–1550–008; ER10–1974–011; ER10–1975–011; ER11–2424–010; ER10–2677–007; ER10–1551–007; ER10–2678–006; ER10–2638–007.

Applicants: ANP Bellingham Energy Company, LLC, ANP Blackstone Energy Company, LLC, Armstrong Energy Limited Partnership, L., Astoria Energy LLC, Astoria Energy II LLC, Calumet Energy Team, LLC, FirstLight Hydro Generating Company, FirstLight Power Resources Management, LLC, Hopewell Cogeneration Ltd Partnership, GDF SUEZ Energy Marketing NA, Inc., Milford Power Limited Partnership, Mt. Tom Generating Company LLC, Northeastern Power Company, North Jersey Energy Associates, A Limited Partnership, Pinetree Power-Tamworth, Inc., Pleasants Energy, LLC, Syracuse Energy Corporation, Troy Energy, LLC, Waterbury Generation LLC, Northeast Energy Associates, A Limited Partnership.

Description: Notice of Non-Material Change in Status of ANP Bellingham Energy Company, LLC, *et al.*
Filed Date: 4/5/13.
Accession Number: 20130405–5130.
Comments Due: 5 p.m. ET 4/26/13.

Docket Numbers: ER10–3063–001.
Applicants: Green Country Energy, LLC.
Description: Green Country Energy, LLC submits supplement to December 21, 2012 Triennial Market Power Update for the Southwest Power Pool, Inc. Region.
Filed Date: 4/4/13.
Accession Number: 20130404–5140.
Comments Due: 5 p.m. ET 4/25/13.

Docket Numbers: ER13–987–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 04–04–2013 SA 2350 ITC–WM Renewable Energy Amended GIA to be effective 2/27/2013.
Filed Date: 4/5/13.
Accession Number: 20130405–5023.
Comments Due: 5 p.m. ET 4/26/13.

Docket Numbers: ER13–1120–001.
Applicants: Bluesource Energy LLC.
Description: Amendment to Initial MBR filing to be effective 4/5/2013.
Filed Date: 4/5/13.
Accession Number: 20130405–5046.
Comments Due: 5 p.m. ET 4/26/13.

Docket Numbers: ER13–1167–001.
Applicants: Delaware Municipal Electric Corporation, Inc.
Description: Delaware Municipal Electric Corporation, Inc. Tariff Filing Amendment to be effective 5/1/2013.
Filed Date: 4/4/13.
Accession Number: 20130404–5114.
Comments Due: 5 p.m. ET 4/17/13.

Docket Numbers: ER13–1243–000.
Applicants: Southern California Edison Company.
Description: SGIAs and Distribution Service Agreements with Expressway Solar A and B LLC to be effective 6/4/2013.
Filed Date: 4/4/13.
Accession Number: 20130404–5000.
Comments Due: 5 p.m. ET 4/25/13.

Docket Numbers: ER13–1244–000.
Applicants: New Energy Services LLC.
Description: Residents Energy Notice of Succession to be effective 3/13/2013.
Filed Date: 4/4/13.
Accession Number: 20130404–5028.
Comments Due: 5 p.m. ET 4/25/13.

Docket Numbers: ER13–1245–000.
Applicants: Southern California Edison Company.
Description: LGIA with Rising Tree Wind Farm LLC for Rising Tree Wind Farm Project to be effective 4/5/2013.
Filed Date: 4/4/13.
Accession Number: 20130404–5039.
Comments Due: 5 p.m. ET 4/25/13.

Docket Numbers: ER13–1246–000.
Applicants: Green Country Energy, LLC.
Description: Revised MBR Filing to be effective 12/31/9998.
Filed Date: 4/4/13.
Accession Number: 20130404–5093.
Comments Due: 5 p.m. ET 4/25/13.

Docket Numbers: ER13–1247–000.
Applicants: St. Paul Cogeneration, LLC.
Description: Notice of Revised Market-Based Rate Tariff to be effective 4/5/2013.
Filed Date: 4/4/13.
Accession Number: 20130404–5111.
Comments Due: 5 p.m. ET 4/25/13.

Docket Numbers: ER13–1248–000.
Applicants: Patua Project LLC.
Description: Patua Project LLC MBR Tariff to be effective 6/1/2013.
Filed Date: 4/4/13.
Accession Number: 20130404–5115.
Comments Due: 5 p.m. ET 4/25/13.

Docket Numbers: ER13–1249–000.
Applicants: Myotis Power Marketing LLC.
Description: Myotis Power Marketing LLC MBR Tariff to be effective 6/1/2013.
Filed Date: 4/4/13.
Accession Number: 20130404–5116.
Comments Due: 5 p.m. ET 4/25/13.

Docket Numbers: ER13–1250–000.
Applicants: Southern California Edison Company.
Description: Revised Added Facilities Rate—Interconnection Facilities Agmt with CDWR to be effective 1/1/2013.
Filed Date: 4/5/13.
Accession Number: 20130405–5001.
Comments Due: 5 p.m. ET 4/26/13.

Docket Numbers: ER13–1251–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits Application for Waiver of the Initial Allocation of Financial Transmission Rights and Auction Revenue Rights for the East Kentucky Power Cooperative, Inc.
Filed Date: 4/3/13.
Accession Number: 20130403–5130.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1252–000.
Applicants: California Power Exchange Corporation.

Description: Petition to Extend Existing Wind-Up Charge Settlement of California Power Exchange Corporation.
Filed Date: 4/3/13.
Accession Number: 20130403–5136.
Comments Due: 5 p.m. ET 4/24/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–08638 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–89–000.
Applicants: Blythe Energy, LLC, AltaGas Power Holdings (U.S.) Inc.
Description: Joint Application for Approval under Section 203 of Blythe Energy, LLC and AltaGas Power Holdings (U.S.) Inc.
Filed Date: 4/2/13.
Accession Number: 20130402–5176.
Comments Due: 5 p.m. ET 4/23/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–750–001.
Applicants: ISO New England Inc.
Description: ER13–750–000 30-Day Compliance Filing to be effective 3/13/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5033.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1227–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 2013–04–02 Cleco Entergy Order 1000 Filing to be effective 6/1/2013.
Filed Date: 4/2/13.
Accession Number: 20130402–5154.
Comments Due: 5 p.m. ET 4/23/13.

Docket Numbers: ER13–1228–000.
Applicants: PacifiCorp.
Description: BPA Agreement for Work at Hatrock Switching Station (Revised) to be effective 6/2/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5027.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1229–000.
Applicants: Badger Creek Limited.
Description: First Revised MBR Tariff to be effective 4/4/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5037.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1230–000.
Applicants: Double ''C'' Limited.
Description: First Revised MBR Tariff to be effective 4/4/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5052.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1231–000.
Applicants: Central Maine Power Company.
Description: Schedule L to Topsham IA to be effective 4/3/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5053.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1232–000.
Applicants: High Sierra Limited.
Description: First Revised MBR Tariff to be effective 4/4/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5054.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1233–000.
Applicants: Kern Front Limited.
Description: First Revised MBR Tariff to be effective 4/4/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5055.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1234–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits Notice of Termination of Generator Interconnection Agreement No. 2333 for Project G598.
Filed Date: 4/3/13.
Accession Number: 20130403–5074.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1235–000.
Applicants: Cabrillo Power I LLC.
Description: Notice of Termination of Interim Black Start Agreement of Cabrillo Power I LLC.
Filed Date: 4/3/13.
Accession Number: 20130403–5077.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1236–000.
Applicants: Cabrillo Power II LLC.
Description: Notice of Termination of Interim Black Start Agreement of Cabrillo Power II LLC.
Filed Date: 4/3/13.
Accession Number: 20130403–5079.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1237–000.
Applicants: Alta Wind I, LLC.
Description: First Revised MBR to be effective 4/4/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5082.
Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: ER13–1238–000.
Applicants: AEP Texas Central Company.
Description: TCC–LCRA Transmission Services Corp IA to be effective 3/7/2013.
Filed Date: 4/3/13.
Accession Number: 20130403–5084.
Comments Due: 5 p.m. ET 4/24/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 03, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–08641 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the

transmission planning activities of the Southern Company Services, Inc.:

Southeastern Regional Transmission Planning (SERTP) Process Interim Stakeholder Meeting on Order No. 1000

April 10, 2013, 10:00 a.m.–3:00 p.m., Local Time

The above-referenced meeting will be held at:

Georgia Transmission Corporation (GTC) Headquarters—Tucker, Georgia

The above-referenced meeting is open to stakeholders.

Further information may be found at: *www.southeasternrtp.com.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER13–908, *Alabama Power Company et al.*
Docket No. ER13–913, *Ohio Valley Electric Corporation*
Docket No. ER13–897, *Louisville Gas and Electric Company and Kentucky Utilities Company*
Docket No. ER12–337, *Mississippi Power Company*
Docket No. ER13–1221, *Mississippi Power Company*
Docket No. EL05–121, *PJM Interconnection, L.L.C.*
Docket No. EL10–52, *Central Transmission, L.L.C.* v. *PJM Interconnection, L.L.C.*
Docket No. ER09–1256, *Potomac-Appalachian Transmission Highline, L.L.C.*
Docket Nos. ER10–253 and EL10–14, *Primary Power, L.L.C.*
Docket Nos. ER11–2814 and ER11–2815, *PJM Interconnection, L.L.C. and American Transmission Systems, Inc.*
Docket No. EL12–69, *Primary Power LLC v. PJM Interconnection, L.L.C.*
Docket No. ER12–91, *PJM Interconnection, L.L.C.*
Docket No. ER12–92, *PJM Interconnection, L.L.C., et al.*
Docket No. ER12–1178, *PJM Interconnection, L.L.C.*
Docket No. ER12–2399, *PJM Interconnection, L.L.C.*
Docket No. ER12–2708, *PJM Interconnection, L.L.C.*
Docket No. ER13–90, *Public Service Electric and Gas Company and PJM Interconnection, L.L.C.*
Docket No. ER13–195, *Indicated PJM Transmission Owners*
Docket No. ER13–198, *PJM Interconnection, L.L.C.*
Docket No. ER13–887, *PJM Interconnection, L.L.C.*
Docket No. ER13–1033, *Linden VFT, LLC and PJM Interconnection, L.L.C.*
Docket Nos. ER13–1177, 1178 and 1179, *PJM Interconnection, L.L.C. and Eastern Kentucky Power Cooperative, Inc.*
Docket No. ER13–186, *Midwest Independent Transmission System Operator, Inc. and the MISO Transmission Owners*
Docket No. ER13–187, *Midwest Independent Transmission System Operator, Inc. and the MISO Transmission Owners*
Docket No. ER13–89, *MidAmerican Energy Company and Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–101, *American Transmission Company LLC and the Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–84, *Cleco Power LLC*
Docket No. ER13–95, *Entergy Arkansas, Inc.*
Docket No. ER13–80, *Tampa Electric Company*
Docket No. ER13–86, *Florida Power Corporation*
Docket No. ER13–104, *Florida Power & Light Company*
Docket No. NJ13–2, *Orlando Utilities Commission*
Docket Nos. ER13–366 and ER13–367, *Southwest Power Pool, Inc.*
Docket No. ER13–83, *Duke Energy Carolinas LLC and Carolina Power & Light Company*
Docket No. ER13–88, *Alcoa Power Generating, Inc.*
Docket No. ER13–107, *South Carolina Electric & Gas Company*

For more information, contact Valerie Martin, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6139 or *Valerie.Martin@ferc.gov.*

Dated: April 4, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08586 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–57–000]

Demand Response Coalition v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on April 3, 2013, pursuant to sections 206 and 306 of the Federal Power Act (FPA), 16 U.S.C. 824e and 825e and Rule 206 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, the Demand Response Coalition [1] (Complainant) filed a formal complaint against the PJM Interconnection, L.L.C. (Respondent or PJM), alleging that certain newly adopted provisions of PJM's Manual 18 (the ''DR Plan Enhancements'') violate section 205 of the FPA and are therefore unenforceable.

The Complainant certifies that copies of the Complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 15, 2013.

Dated: April 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08601 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

[1] The Demand Response Coalition includes Comverge, Inc., Viridity Energy, and Energy Curtailment Specialists (ECS).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM08–13–001]

Transmission Relay Loadability Reliability Standard; Notice of Compliance Filing

Take notice that on February 19, 2013, the North American Electric Reliability Corporation (NERC) submitted a compliance filing in response to the Federal Energy Regulatory Commission's (Commission) Order Nos. 733 [1] and 759 [2] directing NERC to file a test for Planning Coordinators to identify sub-200kV critical facilities, and the results of that test on a representative sample of utilities in three Interconnections.

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 Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 25, 2013.

Dated: April 4, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08583 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

[1] *Transmission Relay Loadability Reliability Standard,* Order No. 733, 130 FERC ¶ 61,221 (2010) (Order No. 733); *order on reh'g and clarification,* Order No. 733–A, 134 FERC ¶ 61,127 (2011); *clarified,* Order No. 733–B, 136 FERC ¶ 61,185 (2011).

[2] *Transmission Relay Loadability Reliability Standard,* 138 FERC ¶ 61,197 (2012).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC13–63–000]

TexStar Crude Oil Pipeline, LP; Notice of Filing

Take notice that on March 26, 2013, TexStar Crude Oil Pipeline, LP (TexStar) submitted to the Federal Energy Regulatory Commission (Commission) a request for waiver of the reporting requirement to file the 2012 FERC Form No. 6, Annual Report of Oil Pipeline Companies.

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 or 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 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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 May 3, 2013.

Dated: April 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08602 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–46–000]

Hattiesburg Industrial Gas Sales, L.L.C.; Notice of Filing

Take notice that on April 1, 2013, Hattiesburg Industrial Gas Sales, L.L.C. (Hattiesburg) filed to cancel its Statement of Operating Conditions including its Tariff ID number in compliance with a Commission Order issued on February 21, 2013, in Docket No. CP12–464–000 (142 FERC ¶ 61,119 (2013)), as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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 Friday, April 12, 2013.

Dated: April 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08593 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–45–000]

Moss Bluff Hub, LLC; Notice of Filing

Take notice that on March 29, 2013, Moss Bluff Hub, LLC filed to revise its Statement of Operating Conditions to modify Sections 3.4.4, 3.5.4 and 3.5.7 to replace certain phrases, as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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 Friday, April 12, 2013.

Dated: April 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08596 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2428–004]

Aquenergy Systems, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* P–2428–004.

c. *Date Filed:* November 11, 2012.

d. *Submitted by:* Aquenergy Systems, Inc., a fully owned subsidiaries of Enel Green Power North America, Inc.

e. *Name of Project:* Piedmont Hydroelectric Project.

f. *Location:* On the Saluda River in Anderson and Greenville counties near the town of Piedmont, South Carolina. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Beth E. Harris, P.E., Southeast Regional Manager, Aquenergy Systems, Inc., 11 Anderson St., Piedmont, SC 29674; email—*Beth.Harris@Enel.com.*

i. *FERC Contact:* Sean Murphy at (202) 502–6145 or via email at *sean.murphy@ferc.gov.*

j. Aquenergy Systems, Inc. filed its request to use the Traditional Licensing Process/Alternative Licensing Procedures on November 11, 2012. Aquenergy Systems, Inc. provided public notice of its request on February 13, 2013. In a letter dated April 5, 2013, the Director of the Division of Hydropower Licensing approved Aquenergy Systems, Inc.'s request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the South Carolina State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Aquenergy Systems, Inc. as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Aquenergy Systems, Inc. filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2428. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2015.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: April 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08587 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. P–10254–023; P–10253–027]

Pelzer Hydro Company, Inc. Consolidated Hydro Southeast, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project Nos.:* P–10254–023, and P–10253–027.

c. *Date Filed:* November 11, 2012.

d. *Submitted by:* Pelzer Hydro Company, Inc. and Consolidated Hydro Southeast, Inc., both fully owned subsidiaries of Enel Green Power North America, Inc.

e. *Name of Projects:* Upper Pelzer Hydroelectric Project (P–10254) and Lower Pelzer Hydroelectric Project (P–10253).

f. *Location:* On the Saluda River in Anderson and Greenville counties near the town of Pelzer (P–10254), and the town of Williamston (P–10253), South Carolina. No federal lands are occupied by the project works or located within the project boundary of either project.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Beth E. Harris, P.E., Southeast Regional Manager, Aquenergy Systems, Inc., 11 Anderson St., Piedmont, SC 29674; email—*Beth.Harris@Enel.com.*

i. *FERC Contact:* Sean Murphy at (202) 502–6145 or via email at *sean.murphy@ferc.gov.*

j. Pelzer Hydro Company, Inc. and Consolidated Hydro Southeast, Inc., filed their request to use the Traditional Licensing Process/Alternative Licensing Procedures on November 11, 2012. Pelzer Hydro Company, Inc. and Consolidated Hydro Southeast, Inc. provided public notice of its request on February 13, 2013. In a letter dated April 5, 2013, the Director of the Division of Hydropower Licensing approved Pelzer Hydro Company, Inc. and Consolidated Hydro Southeast, Inc.'s request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the South Carolina State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Pelzer Hydro Company, Inc. and Consolidated Hydro Southeast, Inc., as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Pelzer Hydro Company, Inc. and Consolidated Hydro Southeast, Inc., filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. Copies of the PADs are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Copies are also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 10254. The licensee states its unequivocal intent to submit an application for a voluntary new license for Project No. 10253. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for these projects must be filed by November 30, 2015.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: April 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08590 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–83–000]

Arlington Storage Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Seneca Lake Storage Facility Gallery 2 Expansion 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 Arlington Storage Company, LLC (Arlington Storage) Seneca Lake Storage Facility Gallery 2 Expansion Project (Project). The expansion would be accomplished through the conversion of two existing interconnected bedded salt caverns (collectively known as ''Gallery 2''), previously used for liquid propane gas (LPG) storage, to natural gas storage. The Project is located in Schuyler County, New York on the west side of Seneca Lake in the Town of Reading (Figure 1). This EA will be used by the Commission 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 need to be evaluated in the EA. Please note that the project scoping period will close on May 3, 2013. Further details on how to submit written comments are provided in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this project as described under the Environmental Mailing List Section of this notice. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

The Project would be constructed on land owned by Arlington Storage or its affiliate U.S. Salt Corporation, within an area used for salt mining and/or natural gas activities. Project work areas have been previously disturbed through historical solution mining operations for salt production and LPG storage. Development of the caverns at Gallery 2 began in 1958 by the International Salt Company. The gallery caverns were used for brine production until 1964

when they were converted to LPG storage until 1984 when the caverns were emptied of LPG and filled with salt water for preservation. No residential lands would be crossed and no unaffiliated landowners would be directly affected by the proposed work.

Summary of the Proposed Project

The proposed Project would consist of converting two existing interconnected bedded salt caverns, previously used for LPG storage, and related facilities (collectively known as ''Gallery 2'') to natural gas storage. The addition of Gallery 2 would add an incremental 0.55 billion cubic feet (Bcf) of working gas capacity to the Arlington Storage existing Seneca Lake facility. Arlington's existing Seneca Lake storage consists of two storage caverns (''Gallery 1'') with a working gas capacity of 1.45 Bcf. The Arlington Storage Seneca Lake facility interconnects with the Dominion Transmission, Inc. and Millennium Pipeline Company, LLC interstate natural gas pipeline systems. In order to add the proposed incremental 0.55 Bcf of facility working gas capacity, Arlington Storage requests to:

- Construct approximately 500 feet of pipeline (170 feet of 16-inch-diameter and 330 feet of 8-inch-diameter pipeline) to connect the Gallery 2 wells to the existing Seneca Lake 16-inch-diameter natural gas pipeline;
- install a 500 horsepower (hp) skid-mounted compressor unit;
- use of Well no. 45 in debrining [1] operation, and for future cavern monitoring;
- construct temporary facilities to be used during the cavern(s) debrining process consisting of a temporary brine pump and temporary brine pipelines;
- installation of electric and instrument air lines connecting the Gallery 2 facilities to the Seneca Lake Storage compressor station; and
- plug and abandon two existing wells formerly used in the Gallery 2 Caverns' brine production and propane storage operation

The general location of the Project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the planned Project pipeline facilities would disturb about 6.63 acres of land owned by Arlington Storage which comprises the Gallery 2 site (4.84 acres), the temporary laydown area (0.92 acres), and the temporary use of an existing access road (0.87 acres) (see Figure 1). Following construction, Arlington would maintain about 0.85 acres for permanent operation of Project facilities. The remaining 5.8 acres disturbed by construction would be restored and revert to former uses.

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 [3] 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. All comments received will be considered 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;
- public safety; and
- cumulative impacts.

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.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, will be published and distributed to the public. A comment period will be allotted after the EA is published for review. We will consider all comments on the EA before we make 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. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. 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 Natural Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the Natural Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s) (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(s) as the Project is further developed. 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 would document our findings on the potential Project impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by Arlington Storage, and comments received from the public. This preliminary list of issues may be changed based on your comments and our analysis.

- Air quality and low-frequency noise impacts from the proposed compression facility;
- effects of construction and operation on migratory wildlife species;

[1] The project would ready the caverns for natural gas storage by pumping the saltwater out of the caverns. This process is referred to as ''debrining''.

[2] 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.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[4] 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 Natural Register of Historic Places.

• potential spills from debrining the caverns and potential impact to groundwater and surface water quality; and

• cumulative environmental impacts from existing natural gas and LPG storage in the region.

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 they will be received in Washington, DC on or before May 3, 2013.

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 (CP13–83–000) 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 at 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; Native American Tribes; environmental and public interest groups; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who own homes within certain distances of aboveground facilities, and anyone who submitted comments on the project. We have made every effort to include all commentors on the mailing list; however, we are unable to include commentors that did not include a physical address with their comments. 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.

Once 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 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 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., CP13–83). 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/esubscribenow.htm.*

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: April 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08598 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14481–000]

Archon Energy 1, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 15, 2013, Archon Energy 1, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Palo Verde Diversion Dam Hydroelectric Project (Palo Verde Diversion Dam Project or project) to be located on the Colorado River, near the city of Mayflower, Riverside County, California. The project would be located on a small portion of Bureau of Land Management lands. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A gated water intake canal adjacent to the existing dam; (2) fish screens; (3) a 200-foot by 50-foot by 70-foot turbine structure enclosing four Kaplan turbine generators; and (4) appurtenant facilities. The project would require interconnection to a Southern California Edison transmission line located approximately one mile west of the Palo Verde Dam. An

interconnection study would be required to determine the exact transmission that would be used. The proposed project would have a total installed capacity of 20 megawatts and generate an estimated average annual energy production of 145 gigawatt-hours.

Applicant Contact: Mr. Paul Grist, Archon Energy 1, Inc., 101 E. Kennedy Blvd., Suite 2800, Tampa, Florida 33602, phone: (403) 618–2018.

FERC Contact: Corey Vezina; phone: (202) 502–8598, email: *Corey.vezina@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14481) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08585 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–112–000]

El Paso Natural Gas Company, L.L.C.; Notice of Request Under Blanket Authorization

Take notice that on March 26, 2013, El Paso Natural Gas Company, L.L.C. (El Paso), P.O. Box 1087, Colorado Springs, CO 80944, filed in Docket No. CP13–112–000, an application pursuant to sections 157.205, 157.208 (b) and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct and operate loop line facilities on the Willcox Lateral located in Cochise County, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Francisco Tarin, Director, Regulatory Affairs Department, El Paso Natural Gas Company, L.L.C., P.O. Box 1087, Colorado Springs, CO 80944, (719) 667–7517.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: April 3, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–08600 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–12–000]

Coordination Between Natural Gas and Electricity Markets; Supplemental Notice of Technical Conference

As announced in the Notice issued on March 5, 2013,[1] the Federal Energy Regulatory Commission (Commission) staff will hold a technical conference on Thursday, April 25, 2013 from 9:00 a.m. to approximately 5:00 p.m. to discuss natural gas and electric scheduling, and issues related to whether and how natural gas and electric industry schedules and practices could be harmonized in order to achieve the most efficient scheduling systems for both industries. The conference will be held at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The agenda and list of roundtable participants for this conference are attached. This conference is free of charge and open to

[1] Coordination between Natural Gas and Electricity Markets, Docket No. AD12–12–000 (Mar. 5, 2013) (Notice of Technical Conference) (*http://elibrary.ferc.gov/idmws/File_list.asp?document_id=14095482*).

the public. Commission members may participate in the conference.

If you have not already done so, those who plan to attend the technical conference are strongly encouraged to complete the registration form located at: *https://www.ferc.gov/whats-new/registration/nat-gas-elec-mkts-form-04-25-13.asp*. There is no deadline to register to attend the conference.

The technical conference will not be transcribed. However, there will be a free webcast of the conference. The webcast will allow persons to listen to the technical conference, but not participate. Anyone with Internet access who wants to listen to the conference can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating the technical conference in the Calendar. The technical conference will contain a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.[2]

Notice is also hereby given that the discussions at the conference may address matters at issue in the following Commission proceeding(s) that are either pending or within their rehearing period: East Tennessee Natural Gas, L.L.C., Docket No. RP13–676–000; Gulf South Pipeline Company, LP, Docket No. RP13–294–001; ISO New England Inc. and New England Power Pool, Docket No. ER13–895–000, –001; Saltville Gas Storage Company L.L.C., Docket No. RP13–677–000; Tennessee Gas Pipeline Company, L.L.C., Docket No. RP12–514–000; Trailblazer Pipeline Company LLC, RP13–240–000; and Transwestern Pipeline Company, LLC, Docket No. RP13–404–001.

Information on the technical conference will be posted on the Web site *http://www.ferc.gov/industries/electric/indus-act/electric-coord.asp,* as well as the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the technical conference, please contact:

Elizabeth Topping (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6731, *Elizabeth.Topping@ferc.gov*.

Anna Fernandez (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6682, *Anna.Fernandez@ferc.gov*.

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *Sarah.McKinley@ferc.gov*.

Dated: April 3, 2013.

Kimberly D. Bose,

Secretary.

Coordination between Natural Gas and Electricity Markets

Docket No. AD12–12–000

April 25, 2013

Agenda

9:00–9:20 a.m. Welcome and Opening Remarks

The purpose of this technical conference is to further explore concerns regarding gas-electric scheduling conflicts, consider whether adjustments to scheduling or capacity release rules or practices are needed, and identify specific areas in which additional guidance or regulatory changes could be considered. The conference will explore whether potential modifications in these areas would facilitate more efficient use of existing electric or natural gas infrastructure.

9:20–9:35 a.m. Opening Staff Presentation

Staff will make a presentation on the gas and electric days, the gas scheduling timeline and electric scheduling timelines.

9:35–12:30 p.m. Coordination of Gas and Electric Schedules

The morning roundtable will address how to best align the gas and electric schedules, including whether and on what geographic footprint an ''energy day'' [3] and the scheduling for that day should be pursued, and whether there is a need for interregional or regional gas or electric scheduling modifications. This roundtable session will address whether and to what extent the electric and natural gas scheduling practices need to be aligned, what scheduling practices need to be revised (gas, electric or both), and whether alignment should be national, regional, or interconnection-wide. Recognizing that the electric markets vary by region, this roundtable session will also explore how electric markets are responding to the needs of gas-fired generators.

Roundtable panelists should be prepared to discuss the following:

- What would be the consequences of implementing a single ''energy day'' that combines the gas and electric days and the scheduling for that day?
- If an interregional or regional approach to harmonizing gas or electric scheduling would improve efficient use of existing infrastructure, how could the different gas and electric geographic footprints be reconciled? How would this work for organized and bilateral electric markets?
- Some have proposed to integrate gas and electric scheduling on an interregional basis through a coordinated Eastern Interconnection gas and electric schedule and a coordinated Western Interconnection gas and electric schedule. What are the consequences of such a proposal?
- How could such interregional electric schedules be harmonized with the natural gas schedule?
- Would coordination of the gas nomination and electric bidding and commitment schedules on an interregional basis result in more efficient use of existing infrastructure?
- If gas or electric schedules were adjusted on a regional basis, should the adjustments be limited to day-ahead schedules, or also include changes to intraday (gas) and real-time (electric) schedules? What are the benefits and costs to each approach?
- Given technological advances, are there opportunities to reduce the time between electric offers and resource commitment? What would the benefits and costs be to implementing such a change?
- Given the increasing reliance on gas-fired generation, are there changes

[2] The webcast will continue to be available on the Calendar of Events on the Commission's Web site *www.ferc.gov* for three months after the conference.

[3] The term ''energy day'' in this context refers to a simultaneous 24-hour time period when gas flow and electric generator commitments are effective. Currently, the ''day'' for purposes of measuring natural gas flows begins at 9:00 a.m. Central time; however, the ''day'' for purposes of measuring electricity flows begins at midnight local time.

required to the current schedules used in wholesale electric markets to commit gas-fired generation in the Day-Ahead market?

• Is there a need to sequence the timing of electric market clearing across adjacent wholesale electric markets? If so, how can the market clearing in adjacent regions be sequenced to promote efficient use of infrastructure? What are the costs and benefits of adjusting the electric market scheduling timeline across adjacent wholesale markets?

• Could electric scheduling modifications allow gas-fired generators to make or adjust gas commitments to avoid periods of gas illiquidity?

• Should electric system operators provide an opportunity for generators to adjust their offers after commitments have been posted or during the operating day to account for changes in gas or transportation costs?

12:30–1:30 p.m. Lunch

1:30–4:30 p.m. Natural Gas Pipeline Flexibility and Potential Scheduling Adjustments

The afternoon roundtable will address suggestions regarding incremental changes to gas scheduling and explore the services already provided by pipelines, marketers and capacity release markets and whether these services could be expanded to provide additional use of existing infrastructure.

Roundtable panelists should be prepared to discuss questions including:

• As some parties have suggested, should additional natural gas nomination opportunities be provided within the scheduling timeline? For example, would an additional nomination period during the night or early morning provide flexibility that would be used by shippers? What are the costs and benefits of doing so?

• Is it sufficient to permit enhanced pipeline nomination opportunities by individual pipelines given the need to coordinate such nominations with upstream and downstream parties?

• Given technological advances, are there opportunities to reduce the time between gas nominations and confirmations for intraday nominations? What would be the benefits and costs of implementing such a change?

• The current business practice standards (NAESB Standard 1.3.80) permit shippers with scheduled gas past the point of a constraint to sell or transfer that gas supply to others without the need to reschedule. How do pipelines implement this requirement? What revisions, if any, are needed to provide more flexibility? How can marketers use this standard to help transfer gas?

• Should the no-bump rule be eliminated or the timing adjusted if additional nomination period(s) are added?

• Do changes need to be made to Commission policies to permit third parties to offer virtual storage or other balancing services? What are the advantages or disadvantages of such a change?

• What tools and services do generators use to manage procuring gas and transportation outside the common trading periods and over weekends? Could existing tools be expanded? Are any additional tools needed to manage difficulties with fuel supply arrangements outside standard trading periods?

• Pre-arranged capacity release transactions can be scheduled at every nomination opportunity on a pipeline. Are there any changes to the capacity release program that would make capacity release more efficient?

• To what extent and how do shippers use redirect options and flexible delivery point nominations? How might this be improved?

4:30–5:00 p.m. Closing

• Recap of what staff heard throughout the day

• Participant feedback

• Areas for further consideration, including issues outside of scheduling

Roundtable Participants

Morning Session

Robert Hayes, Vice President, Physical Trading and Operation, Calpine Corporation
Georgia Carter, Senior Vice President, Rates & Regulatory Affairs, Columbia Pipeline Group
Jim Ginnetti, Senior Vice President, EquiPower Resources Corp.
Lin Franks, Senior Strategist, RTO, FERC & Compliance Initiatives, Indianapolis Power & Light Company
Scott Rupff, Vice President, Marketing, Development & Commercial Operations, Iroquois Pipeline Operating Company
Peter Brandien, Vice President of System Operations, ISO–NE
Ray Miller, Vice President, Pipeline Management, Kinder Morgan
Wes Yeomans, Vice President, Operations/Kelli Joseph, Gas & Electric Analyst, NYISO
Joe Gardner, Vice President, Forward Markets & Operations Services Midwest ISO
Michael Frey, Vice President, Gas Supply & Operations, Municipal Gas Authority of Georgia
James Stanzione, Director of Federal Regulatory National Grid Policy
Donald Sipe, Attorney (On behalf of American Forest & Paper Association), PretiFlaherty
Todd Snitchler, Chairman, Public Utilities Commission of Ohio
Doug Rephlo, Senior Wholesale Originator, Shell Energy North America (U.S.), L.P.
Greg Lander, President, Skipping Stone
Carl Haga, Gas Services Director, Southern Company
Bruce Rew, Vice President, Operations, Southwest Power Pool
Richard Kruse, Vice President, Regulatory, Spectra Energy

Afternoon Session

Daniel Buckner, Director of Fuels Origination and Strategic Development, ACES
John Fortman, Director, Commercial Services, AGL Resources
Patrick Dinkel, Vice President, Resource Management, Arizona Public Service Company
Mark Evans, Vice President, North America Gas and Power Market, BG Energy Merchants, LLC
Kathy Kirk, Senior VP, Marketing & Origination/Adina Owen, Corporate Counsel, Boardwalk Pipeline Partners, LP
Tina Burnett, Senior Energy Analyst (On behalf of Process Gas Consumers Group), The Boeing Corporation
Kevin Holder, Senior Vice President and Chief Commercial Officer, Cardinal Gas Storage Partners
Chris Ditzel, Division Vice President, Commercial Operations, CenterPoint Energy
John Rudiak, Senior Director, Energy Supply, CT Natural Gas & So. CT Gas
Mary Nelson, Devon Energy Corporation
Brad Holmes, Vice President, Market Services, Energy Transfer
Michelle Thiry, Director Energy Management Organization, Entergy
Jim Ginnetti, Senior Vice President, EquiPower Resources Corp.
Gene Nowak, Vice President, Transportation & Storage Services, Kinder Morgan
Rick Smead, Director (On behalf of America's Natural Gas Alliance), Navigant Consulting
Jim Dauer, Director, Natural Gas Trading, NRG Energy, Inc.
Doug Rephlo, Senior Wholesale Originator, Shell Energy North America (U.S.), L.P.
Richard Kruse, Vice President, Regulatory, Spectra Energy
Valerie Crockett, Senior Program Manager Regulatory Policy, TVA

Curt Dallinger, Director Gas Resource Planning, Xcel Energy

[FR Doc. 2013–08597 Filed 4–11–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OW–2009–0932; FRL–9801–8]

Proposed Agency Information Collection Request: Comment Request; Great Lakes Accountability System (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Great Lakes Accountability System'' (EPA ICR No. 2379.02, OMB Control No. 2005–001) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through July 31, 2013. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 11, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–R05–OW–2009–0932 online using *www.regulations.gov* (our preferred method) or by mail to: Great Lakes Accountability System, Attn: Rita Cestaric, EPA, Great Lakes National Program Office, 77 W. Jackson, Chicago, IL 60604.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Rita Cestaric, Great Lakes National Program Office, Environmental Protection Agency, 77 W. Jackson, Chicago, IL 60604; telephone number: (312) 886–6815; fax number: (312) 697–2014; email address: *cestaric.rita@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Great Lakes National Program Office, 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone number (312) 886–6815. Materials are available for viewing from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Pursuant to Section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: In 2010, EPA, in concert with its federal partners, began implementation of the Great Lakes Restoration Initiative (GLRI) that was included in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–88) and subsequent appropriations. The GLRI invests funds in programs and projects strategically chosen to target the most significant environmental problems in the Great Lakes ecosystem.

The legislation called for increased accountability for the GLRI and directed EPA to implement a process to track, measure, and report on progress. As part of this process, federal and non-federal entities receiving GLRI funds are required to submit detailed information on GLRI projects as part of their funding agreement. Recipients are required to provide information on the nature of the activity, responsible organization, organizational point of contact, resource levels, geographic location, major milestones and progress toward GLRI goals. The information is necessary to provide an accurate depiction of activities, progress, and results. Information is updated on a quarterly basis.

A web-based Great Lakes Accountability System (GLAS) is the primary mechanism for collecting information on GLRI activities. GLAS is available for registered users to enter data at *https://login.glnpo.net.* The Web site contains a data entry interface that funding recipients use to enter and submit project information directly into GLAS. The data entry interface consists of a series of screens containing pull-down menus and text boxes, where users can enter project specific information. The GLAS provides necessary information for reports to the President, Congress and the public.

Form Numbers: None.

Respondents/affected entities: Great Lakes Restoration Initiative Funding Recipients.

Respondent's obligation to respond: Required for recipients of GLRI funds.

Estimated number of respondents: 594 (total).

Frequency of response: Quarterly.

Total estimated burden: 20,663 hours (33 hours for state, local, and tribal governments to complete 4 quarterly responses per year, and 41.1 hours for non-government organizations to complete 4 quarterly responses per year). ''Burden'' is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,212,164.00. This includes an estimated annual burden cost of $1,212,164.00 for labor and no capital investment or maintenance and operational costs.

Changes in Estimates: The burden and costs stated above are from the current approved ICR, 2379.01. EPA believes these estimates will remain substantially the same, but may adjust these estimates based on public comments received or other information gained by the Agency prior to submitting the ICR renewal package to OMB.

Dated: April 1, 2013.

Susan Hedman,

Great Lakes National Program Manager.

[FR Doc. 2013–08696 Filed 4–11–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9008–6]

Environmental Impacts 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 04/01/2013 Through 04/05/2013 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. 20130086, Revised Final EIS, USFS, ID, Lower Orogrande, North Fork Ranger District, Clearwater National Forest, Review Period Ends: 05/28/2013, Contact: George Harbaugh 208–935–4260.

EIS No. 20130087, Draft EIS, BLM, NM, TriCounty Resource Management Plan, Comment Period Ends: 07/11/2013, Contact: Jennifer Montoya 575–525–4316.

EIS No. 20130088, Final Supplement, BOEM, 00, Gulf of Mexico OCS Oil and Gas Lease Sales: 2013–2014 Western Planning Area Lease Sale 233 Central Planning Area Lease Sale 231, Review Period Ends: 05/13/2013, Contact: Poojan B. Tripathi 703–787–1738.

Amended Notices

EIS No. 20130041, Draft EIS, USFS, AZ, Salt River Allotments Vegetative Management, Comment Period Ends: 05/08/2013, Contact: Debbie Cress 928–467–3220, Revision to FR Notice Published 02/22/2013; Extending Comment Period from 04/08/2013 to 05/08/2013.

EIS No. 20130047, Draft EIS, NPS, FL, Everglades National Park Draft General Management Plan/East Everglades Wilderness Study, Comment Period Ends: 05/13/2013, Contact: Eric Thuerk 303–987–6852, Revision to FR Notice Published 03/01/2013; Extending Comment Period from 4/15/2013 to 5/13/2013.

Dated: April 9, 2013.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2013–08661 Filed 4–11–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R3–PAL–001; FRL–9801–9]

Notice of Issuance of Final Air Permit; Architect of the Capitol—Capitol Power Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final agency action.

SUMMARY: This action is to provide notice that on January 23, 2013, EPA issued a final air permit to the Architect of the Capitol for the Capitol Power Plant (CPP). This permit became effective on February 25, 2013.

The CPP permit establishes a plantwide applicability limit (PAL) for emissions of oxides of nitrogen as an indicator for nitrogen dioxide, particulate matter less than or equal to ten micrometers in diameter, and greenhouse gases. This action is being taken in accordance with EPA's procedures for decision making set forth at 40 CFR part 124 and the Clean Air Act (CAA).

ADDRESSES: The final permit, EPA's response to public comments, and additional supporting information are available at *http://www.epa.gov/reg3artd/permitting/capitol_power.html.* Copies of the final permit and EPA's response to comments are also available for review at the EPA Region III office and upon request in writing. 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: Mike Gordon, (215) 814–2039, or by email at *gordon.mike@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 29, 2012, EPA published a request for public comment and notice of a public hearing for the CPP permit in the *Washington Times.* EPA received over 200 comments during the public comment period, which ended on October 1, 2012. EPA carefully reviewed each of the comments submitted, and after consideration of the expressed view of all interested persons, the pertinent federal statutes and regulations, the applications and additional material relevant to the applications and contained in the administrative record, EPA made a decision in accordance with 40 CFR 52.21 and 40 CFR part 124 to issue the final PAL permit to CPP. The permit was signed on January 23, 2013, and notice of the final permit decision was provided in accordance with the requirements of 40 CFR 124.15. The District Department of the Environment (DDOE) is also in the process of issuing permits to CPP, however, the DDOE's permits are not part of this action.

Under 40 CFR 124.19(f)(2), notice of any final EPA action regarding a permit issued under the authority of 40 CFR 52.21 must be published in the **Federal Register**. Section 307(b)(1) of the CAA provides for review of any final EPA action in the United States Court of Appeals for the appropriate circuit. Such a petition for review of final EPA action must be filed within 60 days from the date of notice of such action in the **Federal Register**. For purposes of judicial review under the CAA, final EPA action occurs when a final Prevention of Significant Deterioration permit is issued or denied by EPA, and EPA review procedures are exhausted under 40 CFR 124.19(f)(1).

Any person who filed comments on the draft CPP permit was provided the opportunity to petition the Environmental Appeals Board by February 25, 2013. No petitions were submitted; therefore the CPP permit became effective on February 25, 2013.

Dated: March 28, 2013.

Diana Esher,

Director, Air Protection Division, Region III.

[FR Doc. 2013–08697 Filed 4–11–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0141; FRL–9733–7]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit issuance.

SUMMARY: EPA Regions 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 are finalizing the NPDES Vessel General Permit (VGP) to authorize discharges incidental to the normal operation of non-military and non-recreational vessels greater than or equal to 79 feet in length. This VGP, which has an effective date of December 19, 2013, will replace the current VGP, which was issued in December 2008 and expires on December 19, 2013. EPA provided notice of the availability of the draft permit and accompanying fact sheet for public comment in the **Federal Register** on December 8, 2011. At that time, EPA also provided notice of

availability of the draft small Vessel General Permit, on which the Agency has not yet taken final action.

DATES: This permit is effective on December 19, 2013.

In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on the day 2 weeks after **Federal Register** publication. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part 1.5 of the VGP. This permit also provides additional dates for compliance with the terms of this permit.

FOR FURTHER INFORMATION CONTACT: For further information on the VGP, contact Ryan Albert at 202–564–0763 or Juhi Saxena at 202–564–0719, or at EPA Headquarters, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Ave. NW., Washington DC 20460; or email at *vgp@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

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I. General Information

A. Does this action apply to me?

This action applies to vessels operating in a capacity as a means of transportation that have discharges incidental to their normal operation into waters subject to this permit, except recreational vessels as defined in Clean Water Act section 502(25) and vessels of the Armed Forces as defined in Clean Water Act section 312(a)(14). For a discussion of applicability of this permit to fishing vessels greater than 79 feet in length and to ballast water discharges regardless of length, see section II.A below. Affected vessels are henceforth referred to as non-military, non-recreational vessels. Unless otherwise excluded from coverage by Part 6 of the VGP, the waters subject to this permit are waters of the U.S. as defined in 40 CFR 122.2. That provision defines ''waters of the U.S.'' as certain inland waters and the territorial sea, which extends three miles from the baseline. More specifically, CWA section 502(8) defines ''territorial seas'' as ''the belt of the seas measured from the line of the ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.'' Note that the Clean Water Act (CWA) does not require NPDES permits for vessels or other floating craft operating as a means of transportation beyond the territorial seas, i.e., in the contiguous zone or ocean as defined by the CWA sections 502(9), (10). *See* CWA section 502(12) and 40 CFR 122.2 (definition of ''discharge of a pollutant''). This permit, therefore, does not apply in such waters.

Non-military, non-recreational vessels greater than 79 feet in length operating in a capacity as a means of transportation that need NPDES coverage for their incidental discharges will generally be covered under the VGP.

B. How can I get copies of this document and other related information?

1. *Docket.* EPA has established an official public docket for this action: Docket ID No. EPA–HQ–OW–2011–0141. The official public docket is the collection of materials for the final permit. It is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *http://www.regulations.gov* and in hard copy at the EPA Docket Center Public Reading Room, 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 Water Docket is (202) 566–2426. Please note that EPA is in the process of uploading materials in to the docket and expects to be finished with that process by two weeks from the date of publication of this document in the **Federal Register**.

2. *Electronic Access.* You may access this **Federal Register** document electronically at *www.federalregister.gov.* An electronic version of the public docket is available through the Federal Docket Management System (FDMS) found at *http://www.regulations.gov.* You may use the FDMS to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once at the Web site, enter the appropriate Docket ID No. in the ''Search'' box to view the docket.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this section.

3. Response to public comments. EPA received 5,486 comments on the proposed VGP from the shipping industry, States, Tribes, environmental groups, foreign governments and the public. EPA has responded to all comments received and has included these responses in a separate document in the public docket for this permit. See the document titled *Proposed VGP: EPA's Response to Public Comments.*

C. Public Outreach: Public Hearings and Public Meetings, Webcasts

Because EPA anticipated a significant degree of public interest in the draft VGP, EPA held a public hearing on Wednesday January 11, 2012 to receive public comment and answer questions concerning the draft permit. The hearing was held at EPA East Room 1153, 1201 Constitution Ave. NW., Washington DC 20460. In addition, EPA held a public meeting on Monday January 23, 2012, at

the Ralph H. Metcalfe Federal Building, Room 331, 77 West Jackson Blvd., Chicago IL 60604. The purpose of those meetings was to present the proposed requirements of the draft VGP and the basis for those requirements, as well as to answer questions concerning the draft permit. The public meetings and public hearing were attended by a wide variety of stakeholders including representatives from industry, government agencies, and environmental organizations. In addition, EPA held a webcast on January 19, 2012 and two Question and Answer sessions on January 31 and February 7, 2012 to provide information on the proposed permit and to answer questions from interested parties that were unable to attend the public meetings or hearing.

D. Who are the EPA regional contacts for this permit?

For EPA Region 1, contact John Nagle at US EPA, Region 1, New England/Office of Ecosystem Protection, 5 Post Office Square, Suite 100, Mail Code: OEP 06–1, Boston, MA 02109–3912; or at tel.: (617) 918–1054; or email at *nagle.john@epa.gov.*

For EPA Region 2, contact Sieglinde Pylypchuk at US EPA, Region 2, 290 Broadway, 24th Floor, New York, NY 10007–1866; or at tel.: (212) 637–4133; or email at *pylypchuk.sieglinde@epa.gov.* For Puerto Rico, contact Sergio Bosques at tel.: (787) 977–5838; or email at *bosques.sergio@epa.gov.*

For EPA Region 3, contact Mark Smith at US EPA, Region 3, 1650 Arch St., Mail Code: 3WP41, Philadelphia, PA 19103–2029, or at tel.: (215) 814–3105; or email at *smith.mark@epa.gov.*

For EPA Region 4, contact Marshall Hyatt at US EPA, Region 4 Water Protection Division, Atlanta Federal Center, 61 Forsyth St. SW., Atlanta, GA 30303–3104; or at tel.: (404) 562–9304; or email at *hyatt.marshall@epa.gov*

For EPA Region 5, contact Sean Ramach at US EPA, Region 5, 77 W Jackson Blvd., Mail Code: WN16J, Chicago, IL 60604–3507; or at tel.: (312) 886–5284; or email at *ramach.sean@epa.gov.*

For EPA Region 6, contact Jenelle Hill at U.S. EPA, Region 6, 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733; or at tel.: (214) 665–9737; or email at *hill.jenelle@epa.gov.*

For EPA Region 7, contact Alex Owutaka at U.S. EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219; or at tel.: (913) 551–7584; or email at *owutaka.alex@epa.gov.*

For EPA Region 8, contact Lisa Luebke at US EPA, Region 8, 1595 Wynkoop St., Mail Code: 8P–W–WW, Denver, CO 80202–1129; or at tel.: (303) 312–6256; or email at *luebke.lisa@epa.gov.*

For EPA Region 9, contact Eugene Bromley at US EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105–3901; or at tel.: (415) 972–3510; or email at *bromley.eugene@epa.gov.*

For EPA Region 10, contact Cindi Godsey at US EPA, Region 10, 222 W 7th Ave., Box 19, Anchorage, AK 99513; or at tel.: (907) 271–6561; or email at *godsey.cindi@epa.gov.*

II. Background of Permit

A. Statutory and Regulatory History

The Clean Water Act (CWA) section 301(a) provides that ''the discharge of any pollutant by any person shall be unlawful'' unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines ''discharge of a pollutant'' as ''(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.'' 33 U.S.C. 1362(12). A ''point source'' is a ''discernible, confined and discrete conveyance'' and includes a ''vessel or other floating craft.'' 33 U.S.C. 1362(14).

The term ''pollutant'' includes, among other things, ''garbage * * * chemical wastes * * * and industrial, municipal, and agricultural waste discharged into water.'' The Act's definition of ''pollutant'' specifically excludes ''sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces'' within the meaning of CWA section 312. 33 U.S.C. 1362(6).

One way a person may discharge a pollutant without violating the CWA section 301 prohibition is by obtaining authorization to discharge (referred to herein as ''coverage'') under a CWA section 402 National Pollutant Discharge Elimination System (NPDES) permit (33 U.S.C. 1342). Under CWA section 402(a), EPA may ''issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a)'' upon certain conditions required by the Act.

EPA issued the original VGP in response to a District Court ruling which vacated a longstanding regulatory exemption for discharges incidental to the normal operation of vessels at 40 CFR 122.3(a). *Northwest Envtl. Advocates et al.* v. *United States EPA,* 2006 U.S. Dist. LEXIS 69476 (N.D. Cal. 2006). EPA developed the VGP to regulate incidental discharges from vessels operating in a capacity as a means of transportation. That permit was issued on December 18, 2008, with an effective date of December 19, 2008. 73 FR79,473 (Dec. 29, 2008). Subsequently, the U.S. District Court for the Northern District of California issued an order providing that ''the exemption for discharges incidental to the normal operation of a vessel, contained in 40 CFR 122.3(a), is vacated as of February 6, 2009.'' *Northwest Environmental Advocates et al.* v. *United States EPA,* No. C 03–05760–SI (December 17, 2008). Therefore, the date when the regulated community was required to comply with the VGP was February 6, 2009.

On July 31, 2008 Congress enacted Public Law 110–299, which generally prohibited NPDES permitting for discharges incidental to the normal operation of commercial fishing vessels (regardless of size) and those other non-recreational vessels less than 79 feet in length for two years from enactment. This moratorium was subsequently extended to December 18, 2013, by Public Law 111–215. On December 20, 2012, President Obama signed the Coast Guard and Maritime Transportation Act of 2012, which extends the expiration date of the moratorium from December 18, 2013 to December 18, 2014. § 703 of Public Law 112–213. That moratorium does not include ballast water discharges. Therefore, commercial fishing vessels that are greater than 79 feet and do not have ballast water discharges will, barring further legislative action, not be required to seek coverage under the VGP until the moratorium expires on December 18, 2014. That moratorium also does not apply to other incidental discharges, which on a case-by-case basis, EPA or the State, as appropriate, determines contribute to a violation of water quality standards or pose an unacceptable risk to human health or the environment.

The original legislation called for EPA to study the relevant discharges and submit a report to Congress. EPA finalized this Report to Congress, entitled ''Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less Than 79 Feet'' in August 2010, and it can be viewed at: *http://cfpub.epa.gov/npdes/vessels/background.cfm.*

B. The 2008 VGP

The 2008 VGP addresses 26 potential vessel discharge streams by establishing effluent limits, including Best Management Practices (BMPs), to control the discharges of waste streams and constituents found in those waste

streams. For these discharges, the permit establishes effluent limits pertaining to the constituents found in the effluent and BMPs designed to decrease the amount of constituents entering the waste stream. A vessel might not produce all of these discharges, but a vessel owner or operator is responsible for meeting the applicable effluent limits and complying with all the effluent limits for every listed discharge that the vessel produces.

To obtain authorization, the owner or operator of a vessel that is either 300 or more gross registered tons or has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water is required to submit a Notice of Intent (NOI) to receive permit coverage, beginning six months after the permit's issuance date, but no later than nine months after the permit's issuance date. Owners or operators of vessels that meet the applicable eligibility requirements for permit coverage but are not required to submit an NOI, including vessels less than 300 gross registered tons with no more than 8 cubic meters of ballast water capacity are automatically authorized by the permit to discharge according to the permit requirements.

The 2008 VGP requires owners or operators of vessels to conduct routine self-inspections and monitoring of all areas of the vessel that the permit addresses. The routine self-inspections are required to be documented in the ship's logbook. Analytical monitoring of certain discharges is required for certain types of vessels. The VGP also requires owners or operators of vessels to conduct comprehensive annual vessel inspections, to ensure even the hard-to-reach areas of the vessel are inspected for permit compliance. If the vessel is placed in dry dock while covered under the permit, a dry dock inspection and report is required to be completed. Additional monitoring requirements are imposed on owners or operators of certain classes of vessels, based on their unique characteristics.

For additional information on the 2008 VGP, please go to *www.epa.gov/npdes* or see Docket ID. No. EPA–HQ–OW–2008–0055 at *www.regulations.gov.*

C. National Research Council and Science Advisory Board Ballast Water Studies

As part of its strategy for improving the Agency's understanding of ballast water discharges, EPA, in partnership with the United States Coast Guard, commissioned two ballast water studies from highly respected, independent scientific entities. EPA commissioned these studies in order to produce the best possible scientific compendium of ballast water information relevant to the development of today's VGP. EPA commissioned these studies to help inform the Agency's decisions about what effluent limits to set for ballast water discharges.

The first study was led by the National Research Council (which functions under the auspices of the National Academy of Sciences (NAS), the National Academy of Engineering, and the Institute of Medicine) and addressed how to assess risk to water quality associated with ballast water discharges (NAS, 2011). For a copy of the NAS report, please go to: *http://www.nap.edu/catalog.php?record_id=13184.* The second study was led by EPA's autonomous Science Advisory Board (SAB) and evaluated the status of ballast water treatment technologies. For a copy of the SAB report, please see: *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/BW%20discharge!OpenDocument&TableRow=2.3#2.*

III. Scope and Applicability of the 2013 VGP

A. CWA Section 401 Certification and Coastal Zone Management Act

EPA may not issue a permit authorizing discharges into the waters of a State until that State has granted certification under CWA section 401 or has waived its right to certify (or been deemed to have waived). 33 U.S.C. 1341(a)(1); 40 CFR 124.53(a). EPA gave each State, Tribe, and Territory as applicable over 9 months to certify, well over the 60 day regulatory norm for NPDES permits. EPA found that this 401 certification had unusual circumstances which warranted additional time (e.g., the permits regulate discharges of mobile point sources; they have broad applicability to the waters of every State and Tribe in the country). If a State believed that any permit condition(s) more stringent than those contained in the draft permits were necessary to meet the applicable requirements of either the CWA or State law, the State had an opportunity to include those condition(s) in its certification. 40 CFR 124.53(e)(1). A number of States provided such conditions in their certifications, and EPA has added them to the VGP pursuant to CWA section 401(d). 33 U.S.C. 1341(d).

Similarly, EPA may not authorize discharges under a general permit into waters of a State if the State objects with EPA's National Consistency Determination, pursuant to the regulations implementing of the Coastal Zone Management Act (''CZMA''), specifically the regulations at 15 CFR 930.31(d) and 930.36(e). If the State coastal zone management agency objects to the general permit, then the general permit is not available for use by potential general permit users in that State unless the applicant who wants to use the general permit provides the State agency with the applicant's consistency determination and the State agency concurs. 15 CFR 930.31(d). NOAA has explained that ''a State objection to a consistency determination for the issuance of a general permit would alter the form of CZMA compliance required, transforming the general permit into a series of case by case CZMA decisions and requiring an individual who wants to use the general permit to submit an individual consistency certification to the State agency in compliance with 15 CFR part 930.'' 71 FR 788, 793.

B. Geographic Coverage of VGP

The permit is applicable to discharges incidental to the normal operation of a vessel (identified in Part 1.2 of the VGP and section 3.5 of the VGP fact sheet) into waters subject to this permit, which means ''waters of the U.S.'' as defined in 40 CFR 122.2, except as otherwise excluded by Part 6 of the permit. This includes the territorial seas, defined in section 502(8) of the CWA, extending to three miles from the baseline. *Pacific Legal Foundation* v. *Costle,* 586 F.2d 650, 655–656 (9th Cir. 1978); *Natural Resources Defense Council, Inc.* v. *U.S. EPA,* 863 F.2d 1420, 1435 (9th Cir. 1988).

The general permit will cover vessel discharges into the waters of the U.S. in all states and territories, regardless of whether a state is authorized to implement other aspects of the NPDES permit program within its jurisdiction, except as otherwise excluded by Part 6 of the VGP. While, pursuant to CWA section 402(c), EPA typically is required to suspend permit issuance in authorized states, EPA may issue NPDES permits in authorized states for discharges incidental to the normal operation of a vessel because section 402(c)(1) of the Clean Water Act prohibits EPA from issuing permits in authorized states only for ''those discharges subject to [the state's authorized] program.'' Discharges formerly excluded under 40 CFR 122.3 are not ''subject to'' authorized state programs. The vessel discharges that will be covered by the permit are discharges formerly excluded from NPDES permitting programs under 40 CFR 122.3. (See discussion of the vacatur of this exclusion above.) Therefore the discharges at issue are not

considered a part of any currently authorized state NPDES program. See 40 CFR 123.1(i)(2) (where state programs have a greater scope of coverage than ''required'' under the federal program, that additional coverage is not part of the authorized program) and 40 CFR 123.1(g)(1) (authorized state programs are not required to prohibit point source discharges exempted under 40 CFR122.3).

C. Categories of Vessels Covered Under VGP

The VGP applies to owners and operators of non-recreational vessels that are 79 feet (24.08 meters) and greater in length. The types of vessels covered under the VGP include cruise ships, ferries, barges, mobile offshore drilling units, oil tankers or petroleum tankers, bulk carriers, cargo ships, container ships, other cargo freighters, refrigerant ships, research vessels, emergency response vessels, including firefighting and police vessels, and any other vessels operating in a capacity as a means of transportation. Vessels of the Armed Forces of the United States are not eligible for coverage by this permit. The discharges eligible for coverage under this permit are those covered by the former exclusion in 40 CFR 122.3(a) prior to its vacatur.

D. Summary of VGP and Significant Changes from the Proposed VGP

1. Ballast Water

Today's final permit contains numeric technology-based effluent limitations that are applicable to vessels with ballast water tanks and over time will largely replace the non-numeric effluent limitations (BMPs) for ballast water in the 2008 VGP. These limitations will achieve significant reductions in the number of living organisms discharged via ballast water into waters subject to this permit. Ballast water discharges are widely recognized as one of the primary sources (or vectors) for the spread of aquatic invasive species, also known as aquatic nuisance species (ANS). When species in ballast tanks are transported between waterbodies and discharged, they have potential for establishing new, non-indigenous populations that can cause severe economic and ecological impacts. EPA has expressed the numeric effluent limit for ballast water discharges as numbers of living organisms per cubic meter of ballast water (i.e. as a maximum acceptable concentration) because reducing the concentration of living organisms will reduce inoculum densities of potential invasive species discharged in a vessel's ballast water, i.e., thereby reducing the risk posed by the discharge. Today's permit also contains maximum discharge limitations for certain biocides and residuals to limit the impact of these pollutants to waters subject to this permit. The final permit also allows most vessels which meet the treatment requirements to no longer perform ballast water exchange. Under the VGP, vessel owner/operators subject to the concentration-based numeric discharge limitations are able to meet these limits in one of four ways: treat ballast water to meet the applicable numeric limits of the VGP prior to discharge; transfer the ship's ballast water to a third party for treatment at an NPDES permitted facility; use treated municipal/potable water as ballast water; or not discharge ballast water. As in the 2008 VGP, vessels enrolled in, and meeting the requirements of the U.S. Coast Guard's Shipboard Technology Evaluation Program (STEP) would be deemed to be in compliance with the numeric limitations.

As in the 2008 VGP, EPA has included certain mandatory practices for all vessels. These requirements are consistent with EPA's Science Advisory Board's recommendations to reduce risks at multiple points in the ballast's operations (See EPA SAB 2011, available at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/6FFF1BFB6F4E09FD852578CB006E0149/$File/EPA-SAB-11-009-unsigned.pdf*). Some of the mandatory practices for all vessels equipped with ballast water tanks that operate in waters of the U.S are to: avoid the discharge of ballast water into waters subject to this permit that are within or that may directly affect marine sanctuaries, marine preserves, marine parks, shellfish beds, or coral reefs; minimize or avoid uptake of ballast water in the listed areas and situations; clean ballast tanks regularly to remove sediments in mid-ocean or under controlled arrangements in port, or at drydock; when feasible and safe, vessels must use ballast water pumps instead of gravity draining to empty your ballast water tanks (to remove larger living organisms); and minimize the discharge of ballast water essential for vessel operations while in the waters subject to this permit. EPA estimated the cost and burden of the ballast water requirements in its economic analysis for the permit.

EPA has determined that Best Available Technology Economically Achievable (BAT) over time will be a function of a vessel's construction date, size, and class. The VGP imposes several best management practices (BMPs) for vessels until they are required to meet the numeric ballast water limits that EPA has found to be available, practicable and economically achievable. These interim requirements are substantially similar to those in the 2008 VGP. One of the interim management measures is that all vessels which operate outside of the Exclusive Economic Zone (EEZ) that are equipped to carry ballast water and enter the Great Lakes via the Saint Lawrence Seaway System must conduct ballast water exchange or saltwater flushing (as applicable) of ballast water tanks 200 nautical miles from any shore before entering either the U.S. or Canadian waters of the Seaway System.

For certain existing vessels, EPA proposed a staggered implementation schedule to require the vessel to meet the numeric effluent limitations by the first drydocking after January 1, 2014 or January 1, 2016 depending on vessel size, which may extend beyond the permit term for certain vessels. EPA has finalized this schedule. However, EPA has adjusted the date in the final VGP defining ''new build'' vessels—which are vessels that are subject to numeric limits immediately upon the effective date of today's permit—from those vessels that are newly constructed after January 1, 2012 to those that are newly constructed after December 1, 2013. EPA notes that this time schedule is consistent with the timelines set forth in the U.S. Coast Guard's March 2012 final ballast water discharge standard rulemaking.

In today's permit, the numeric concentration-based treatment limits for ballast water discharges do not apply to some vessels, such as inland and certain seagoing vessels less than 1600 gross registered tons; vessels operating exclusively within a limited area on short voyages; unmanned, unpowered barges; and vessels built before January 1, 2009 that operate exclusively in the Laurentian Great Lakes (referred to as ''Lakers''). The draft VGP would have required any vessel (not otherwise exempt) with greater than 8 cubic meters of ballast water capacity to meet the numeric ballast effluent limitations for ballast water. In response to comments questioning the availability of systems for these vessels, EPA reconsidered the issue and concluded that though technologies are promising for future development, numeric ballast water treatment limits for inland and seagoing vessels less than 1600 gross registered tons do not represent BAT at this time or over the life of the permit. Among other things, most ballast water treatment systems have been designed for larger vessels and/or vessels which only uptake or discharge ballast water on either end of longer voyages.

With respect to Lakers that are not subject to the numeric limits found in Part 2.2.3.5 of the VGP, EPA has expanded the definition of Lakers to include vessels that operate exclusively in the Laurentian Great Lakes (i.e., existing vessels that operate upstream of the waters of the St. Lawrence River west of a rhumb line drawn from Cap de Rosiers to West Point, Anticosti Island, and west of a line along 63 W. longitude from Anticosti Island to the north shore of the St. Lawrence River). After considering public comment, EPA has determined that effluent limits based on ballast water treatment do not reflect BAT for existing vessels operating exclusively in the Laurentian Great Lakes at this time. Today's VGP includes three management measures specific to Lakers which EPA believes reflect BAT, and represent common sense approaches to managing ballast water discharges for vessels when they have not installed ballast water treatment systems.

Additionally, as proposed, the final VGP requires vessels entering the Great Lakes utilizing a ballast water treatment system to conduct ballast water exchange or saltwater flushing (as applicable) in addition to meeting the numeric limits for ballast water once they apply: (1) The vessel operates outside the Exclusive Economic Zone (EEZ) and more than 200 nm from any shore and then enters the Great Lakes, and (2) the vessel has taken on ballast water that has a salinity of less than 18 ppt from a coastal, estuarine, or freshwater ecosystem within the previous month. If a vessel meeting the description in (1) has not taken on ballast water with a salinity of less than 18 ppt in the previous month, the master of the vessel would be required to certify to this effect as part of the ballast water recordkeeping requirements before entering the Great Lakes. EPA believes that such a requirement significantly reduces the risk of new invasions from vessels entering the Great Lakes, but the Agency, for reasons pertaining to the efficacy of the requirement in other aquatic environments, has not extended it to other U.S. waters. Please see section 4.4.3.9 of the VGP Fact Sheet for discussion.

2. Non-Ballast Water

Compared to the 2008 VGP, today's VGP imposes more prescriptive technology-based effluent limits in the form of Best Management Practices for discharges of oil to sea interfaces. The VGP requires that all powered vessels must use ''environmentally acceptable lubricants'' in their oil-to-sea interfaces unless it is technically infeasible to do so. Based on public comment received on the proposal, EPA clarified that, by using the reference to ''technically infeasible,'' EPA intends to refer to situations when: no EAL products are approved for use in a given application that meet manufacturer specifications for that equipment; users of products that are pre-lubricated (e.g., wire ropes) have no available alternatives manufactured with EALs; products meeting a manufacturers specifications are not available within any port in which the vessel calls; or changes to use an EAL must wait until the vessel's next drydocking. EPA expects that it will be technically feasible for a significant portion of vessel operators to use EALs, particularly for newly built vessels, during this permit term. These requirements will reduce the toxicity of thousands of gallons or more of oil leaked into U.S. waters every year.

In addition, EPA clarified that, even though the final permit requires that wire ropes or cables and other equipment must be thoroughly wiped down to remove excess lubricant before being placed into service and after periodic lubrication, wipe downs to remove excess lubricant are not required if doing so is deemed unsafe by the Master of the vessel.

Additionally, in the event that the permitting moratorium for commercial fishing vessels is not extended past December 18, 2014, today's permit will be available to authorize the discharge of fish hold effluent and will establish appropriate Best Management Practices for this discharge type after that date. Among other things, the proposed VGP contained a provision prohibiting the discard of unused bait overboard. In response to comments, the final VGP limits the scope this prohibition and clarifies that it applies only to unused live bait. Moreover, the prohibition does not apply to the unused live bait that is discharged into the same waterbody or watershed from which it was caught. The adjusted prohibition render it easy to implement and consistent with typical management practices regarding the use of live bait, while at the same time significantly reducing the risk of new invasive species (including fish pathogens) introductions attributable to the release of unused bait.

EPA has also included numeric limits for exhaust gas scrubber effluent that are generally consistent with those established by International Maritime Organization guidelines for this discharge type. Today's permit includes a revised discharge standard from washwater from the exhaust gas scrubber treatment system for pH. EPA believes the revised limit is both technically feasible and will ensure the discharge does not pose an unacceptable risk to receiving water. The proposed pH limit of no less than 6.5 was modified to better align with the IMO guidelines, and therefore, the final VGP requires that the discharge washwater must have a pH of no less than 6.0 measured at the ship's overboard discharge. See discussion in section 4.4.26 of the VGP Fact Sheet for additional discussion.

The VGP contains monitoring requirements for certain larger vessels for ballast water, bilgewater, graywater, and/or exhaust gas scrubber effluent if they discharge into waters subject to the permit. EPA has included these monitoring requirements to assure treatment systems are performing as required (when applicable) and to generate additional information for EPA's future analyses. Based on public comments received on the proposed VGP, EPA has adjusted the frequency of monitoring for some or all parameters for each discharge type and/or applicability thresholds for vessels which must conduct monitoring. These revisions in the final VGP have generally resulted in a reduced burden for the regulated industry relative to the proposed VGP. EPA estimated the cost and burden of these requirements in its economic analysis for the permit. EPA had taken comment on more stringent 5 ppm bilgewater oil and grease discharge limits for new build vessels in the VGP; based upon further analysis, EPA decided to retain the 15 ppm limit in the final permit but plans to work with our international partners at the IMO to explore the issue further.

The final VGP requires new build vessels greater than 400 gross tons which discharge bilgewater into waters subject to this permit to annually collect a sample of the bilgewater effluent for analysis of oil using specified methods to demonstrate treatment equipment maintenance and compliance with this permit and record the reading on the oil content meter. If the vessel has a type-approved oil discharge monitoring system including an overboard discharge control unit that prevents bilgewater discharges above 5 ppm and has two consecutive years' worth of analytical monitoring results that are below 5 ppm for oil and grease during the permit term, a vessel may cease conducting the annual analytical bilgewater monitoring for the rest of the permit term.

3. Administrative Improvements

EPA has made several efficiency improvements, including clarifying that

electronic recordkeeping is allowed under the permit, eliminating duplicative reporting, and allowing consolidated reporting for certain vessels.

Under today's final VGP, permittees not required to submit a NOI are required to complete and keep a Permit Authorization and Record of Inspection (PARI) Form onboard their vessel at all times. The final VGP contains the PARI form requirement because the Agency believes it is an efficient way for the owner/operator to certify that they have read and agreed to comply with the terms of the permit, and demonstrate basic understanding of the permit's terms and conditions. In addition, the form will provide EPA (or its authorized representative) with a standardized foundation for conducting inspections. Under the final VGP, EPA has consolidated the one-time report and annual noncompliance report into one annual report. As discussed in the fact sheet for today's permit, EPA found that the 2008 VGP reporting requirements resulted in confusion among some permittees. EPA believes that having a single annual report that permittees must file, which can include all of the permittee's analytical monitoring results (as applicable) for the previous year, will reduce this confusion and result in better information for the Agency. Additionally, while the proposed VGP allowed operators of unmanned, unpowered barges to complete combined annual reports if they meet certain criteria, the final VGP expands the ability for certain vessels (unmanned unpowered barges and vessels under 300 gross tons) to submit a combined annual report, if they meet specified criteria, to maximize efficiency and reduce the burden on a significant portion of the regulated universe. Many of these vessels are fundamentally similar and have a limited number of discharges. Vessels less than 300 gross tons, as a class, tend to produce lower volumes of effluent than their larger ocean going counterparts. Hence, EPA has broadened the applicability of this provision in order to provide an efficient way to gather information by the agency without sacrificing data quality.

IV. Analysis of Economic Impacts of VGP

EPA performed an economic analysis for the VGP to evaluate the incremental costs of requirements in the permit. This analysis is available in the docket for today's permit. A summary of the analysis follows.

A. Analysis of VGP costs

EPA estimates that approximately 60,000 domestic flag and 12,400 foreign flag vessels would be covered under the VGP, but only a subset of these vessels would incur incremental costs as a result of the revised VGP requirements. To estimate the effect of revised permit requirements on an industry as a whole, EPA's VGP analysis takes into account previous conditions and determines how the industry would act in the future in the absence of revised permit requirements. The baseline for this analysis is full industry compliance with existing federal and state regulations, including the 2008 VGP in the case of vessels currently covered by that permit; and current industry practices or standards that exceed current regulations to the extent that they can be empirically observed. In addition, a number of laws and associated regulations (including the National Invasive Species Act; the Act to Prevent Pollution from Ships; the Comprehensive Environmental Response, Compensation, and Liability Act; the Organotin Anti-fouling Paint Control Act; and others) already cover certain discharges that would be subject to the new permitting regime. The overlap between revised permit requirements and existing regulations and practices is discussed at greater length in the economic analysis.

EPA estimated incremental compliance costs to commercial vessels associated with revised permit's practices and discharge categories identified and the paperwork burden costs. Incremental costs are understood to result from the inclusion of all commercial fishing vessels 79 feet or larger under the VGP. As noted above, the moratorium on coverage for commercial fishing vessels and vessels less than 79 feet expires on December 18, 2014. Commercial fishing vessels 79 feet or larger will be covered by the VGP, and most non-recreational vessels less than 79 feet, including commercial fishing vessels, are expected to be covered by the sVGP. Changes in compliance costs also result from streamlining selected requirements, which is expected to reduce compliance costs for owners of certain vessels. Overall, EPA finds that revisions in the VGP requirements could result in aggregate annual incremental costs for domestic vessels ranging between $7.2 and $23.0 million (in 2010$). This includes the paperwork burden costs and the sum of all practices for applicable discharge categories for all vessels estimated to be covered by the revised VGP. EPA notes that the total national cost estimate may be overly conservative (i.e. an overestimate of costs attributable to the permit) due to the inclusion of costs associated with commercial fishing vessels. The total annual compliance costs resulting from the 2013 VGP is reduced by $627,635 to $2,296,526 for the first year of permit coverage year as these vessels are not required to obtain NPDES coverage until at least December 18, 2014.

The average per vessel compliance costs range between $51 and $7,004 per vessel. There is considerable uncertainty in the assumptions used for several practices and discharge categories and these estimates therefore provide illustrative ranges of the costs potentially associated with the 2013 VGP rather than incremental costs incurred by any given vessel owner. Tank ships have the highest average compliance costs; this is driven by potential incremental costs for oil tankers exclusively engaged in coastwise trade that may install and operate onboard ballast water treatment systems to meet the 2013 VGP requirements applicable to ballast water discharges.

To evaluate economic impacts of revised VGP requirements on the water transportation, fishing, and mining industries, EPA performed a firm-level analysis. The firm-level analysis examines the impact of any incremental cost per vessel to comply with the revised VGP requirements on model firms that represent the financial conditions of ''typical'' businesses in each of the examined industry sectors. More than ninety percent of the firms in the water transportation and fishing industries, and in the drilling oil and gas wells segment of the mining industry, are small, and EPA believes it is unlikely that firm-level impacts would be significant among large firms in this industry. Therefore, a firm-level analysis focuses on assessment of impacts on small businesses. To evaluate the potential impact of the final VGP on small entities, EPA used a cost-to-revenue test to evaluate the potential severity of economic impact on vessels and facilities owned by small entities. The test calculates annualized pre-tax compliance cost as a percentage of total revenues and uses a threshold of 1 and 3 percent to identify facilities that would be significantly impacted as a result of this Permit.

EPA applied a cost-to-revenue test which calculates annualized pre-tax compliance cost as a percentage of total revenues and used a threshold of 1 and 3% to identify entities that would be significantly impacted as a result of this Permit. The total number of entities

expected to exceed a 1% cost-to-revenue threshold ranges from 76 under low cost assumptions to 340 under high cost assumptions. Of this universe, the total number of entities expected to exceed a 3% cost-to-revenue threshold ranges from 5 under low cost assumptions to 30 under high cost assumptions. This is based out of 5,480 total small firms. Accordingly, EPA concludes that the VGP will not have a significant economic impact on a substantial number of small entities or other businesses.

B. Benefits of the VGP

Although EPA was unable to evaluate the expected benefits of the permit in dollar terms due to data limitations, the Agency collected and considered relevant information to enable qualitative consideration of ecological benefits and to assess the importance of the ecological gains from the revisions. EPA expects that reductions in vessel discharges will benefit society in two broad categories: (1) Enhanced water quality from reduced pollutant discharges and (2) reduced risk of invasive species introduction and dispersal. With some of the most damaging invasive species having cost the U.S. economy upwards of 1 billion dollars each, the environmental and economic benefits of stopping and slowing new invasions introductions and dispersal are significant.

Because many of the nation's busiest ports are considered to be impaired by a variety of pollutants found in vessel discharges, reducing pollutant loadings from these discharges is expected to have benefits associated with the reduction of concentrations of nutrients, metals, oil, grease, and toxics in waters with high levels of vessel traffic.

V. Executive Orders 12866 and 13563

Under Executive Order (EO) 12866 (58 FR 51735 (October 4, 1993)) EPA has determined this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821) and any changes made in response to OMB recommendations have been documented in the docket for this action.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: March 28, 2013.

Ira W. Leighton,

Deputy Regional Administrator, EPA Region 1.

Dated: March 28, 2013.

Ramon Torres,

Acting Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: March 28, 2013.

Joan Leary Matthews,

Division Director, Clean Water Division, EPA Region 2.

Dated: March 28, 2013.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

Dated: March 28, 2013.

James D. Giattina,

Director, Water Protection Division, EPA Region 4.

Dated: March 28, 2013.

Tinka G. Hyde,

Director, Water Division, EPA Region 5.

Dated: March 28, 2013.

William K. Honker,

Director, Water Quality Protection Division, EPA Region 6.

Dated: March 28, 2013.

Karen Flournoy,

Director, Wetlands and Pesticides Division, EPA Region 7.

Dated: March 28, 2013.

Derrith R. Watchman-Moore,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.

Dated: March 28, 2013.

John Kemmerer,

Acting Director, Water Division, EPA Region 9.

Dated: March 28, 2013.

Daniel D. Opalski,

Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. 2013–08662 Filed 4–11–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0025; FRL–9383–7]

Notice of Receipt of Pesticide Products; Registration Applications To Register New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This notice provides the public with an opportunity to comment on the applications.

DATES: Comments must be received on or before May 13, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EPA Registration Number or EPA File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone, email, or mail. Mail correspondence to the Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under the Agency's public participation process for registration actions, there will be an additional opportunity for a 30-day public comment period on the proposed decision. Please see the Agency's public participation Web site for additional information on this process (*http://www.epa.gov/pesticides/regulating/registration-public-involvement.html*). *EPA received the following applications to register* new uses for pesticide products containing currently registered active ingredients:

1. *EPA Registration Numbers:* 100–739 and 100–1262. *Docket ID Number:* EPA–HQ–OPP–2013–0151. *Applicant:* Syngenta Crop Protection LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Difenoconazole. *Product Type:* Fungicide. *Proposed Use:* Canola. Contact: Rose Mary Kearns, (703) 305–5611, email address: *kearns.rosemary@epa.gov*.

2. *EPA Registration Numbers:* 100–1254 and 100–1281. *Docket ID Number:* EPA–HQ–OPP–2012–1254. *Applicant:* Syngenta Crop Protection LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Mandipropamid. *Product Type:* Fungicide. *Proposed Uses:* Ginseng; Basil; Succulent Bean, Small Fruit Vine, subgroup 13–07B; Bulb Onion, subgroups 3–07 A and B; Fruiting Vegetable group 8–10; and Greenhouse Tomato. Contact: Rose Mary Kearns, (703) 305–5611, email address: *kearns.rosemary@epa.gov*.

3. *EPA Registration Numbers:* 264–693 and 264–695. *Docket ID Number:* EPA–HQ–OPP–2013–0161. *Applicant:* Bayer CropScience LP, 2 T.W. Alexander Drive, P.O. Box 1214, Research Triangle Park, NC 27709. *Active ingredient:* Fenamidone. *Product Type:* Fungicide. *Proposed Uses:* Bean, succulent; Ginseng; Onion, bulb, subgroup 3–07A; and Onion, green, subgroup 3–07B. Contact: Rose Mary Kearns, (703) 305–5611, email address: *kearns.rosemary@epa.gov*.

4. *EPA Registration Number:* 7969–278. *Docket ID Number:* EPA–HQ–OPP–2013–0008. *Applicant:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. *Active ingredient:* Saflufenacil. *Product Type:* Herbicide. *Proposed Uses:* For use in rice paddies that are also used for aquaculture of fish and crayfish production. Contact: Bethany Benbow, (703) 347–8072, email address: *benbow.bethany@epa.gov*.

5. *EPA Registration Number:* 71512–7. *Docket ID Number:* EPA–HQ–OPP–2013–0038. *Applicant:* ISK Bioscience Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Flonicamid. *Product Type:* Insecticide. *Proposed Use:* Technical Flonicamid Insecticide for Manufacturing and Repacking Use Only Products for use in/on Almond; Almond, hulls; Pecans; and Tree Nuts, crop group 4–12. Contact: Carmen Rodia, (703) 306–0327, email address: *rodia.carmen@epa.gov*.

6. *EPA Registration Numbers:* 71512–9 and 71512–10. *Docket ID Number:* EPA–HQ–OPP–2013–0038. *Applicant:* ISK Bioscience Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Flonicamid. *Product Type:* Insecticide. *Proposed Uses:* Almond; Almond, hulls; Pecans; and Tree Nuts, crop group 14–12. Contact: Carmen Rodia, (703) 306–0327, email address: *rodia.carmen@epa.gov*.

7. *EPA Registration Number/EPA File Symbol:* 71512–14. *Docket ID Number:* EPA–HQ–OPP–2013–0038. *Applicant:* ISK Bioscience Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Flonicamid. *Product Type:* Insecticide. *Proposed Uses:* Flonicamid 50WG for Manufacturing and Repacking Use Only Products for use in/on Almond; Almond, hulls; Pecans; and Tree Nuts, crop group 14–12. Contact: Carmen Rodia, (703) 306–0327, email address: *rodia.carmen@epa.gov*.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 5, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–08685 Filed 4–11–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9801–7]

Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC) and EPA's Science Advisory Board (SAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of scientific experts from a diverse range of disciplines to be considered for appointment to the Clean Air Scientific Advisory Committee (CASAC), the Science Advisory Board (SAB) and six SAB committees described in this notice. Appointments are anticipated to be filled by the start of Fiscal Year 2014 (October 2013).

DATES: Nominations should be submitted in time to arrive no later than May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Nominators unable to submit nominations electronically as described below may submit a paper copy to the Designated Federal Officers for the committees, as identified below. General inquiries regarding the work of the CASAC and SAB or SAB committees may also be directed to the designated DFOs.

Background: Established by statute, the CASAC (42 U.S.C. 7409) and SAB (42 U.S.C. 4365) are chartered Federal Advisory Committees that provide independent scientific and technical peer review, consultation, advice and recommendations directly to the EPA Administrator on the scientific bases for EPA's actions and programs. Members of the CASAC and the SAB constitute distinguished bodies of non-EPA scientists, engineers, economists, and behavioral and social scientists who are nationally and internationally recognized experts in their respective fields. Members are appointed by the EPA Administrator for a three-year term.

Expertise Sought for CASAC: Established in 1977 under the Clean Air Act (CAA) Amendments, the chartered CASAC reviews and offers scientific advice to the EPA Administrator on technical aspects of national ambient air quality standards for criteria pollutants (ozone; particulate matter; carbon monoxide; nitrogen oxides; sulfur dioxide; and lead). As required under the CAA section 109(d), CASAC is composed of seven members, with at least one member of the National Academy of Sciences, one physician, and one person representing state air pollution control agencies. The SAB Staff Office is seeking nominations of experts to serve on the CASAC who represent state air pollution control agencies and who have demonstrated experience in the following science related to the environment: *Health sciences; medicine; public health; atmospheric sciences; modeling; and/or risk assessment.* The SAB Staff Office is especially interested in scientists with expertise described above who have knowledge and experience in *air quality relating to criteria pollutants.* For further information about the CASAC membership appointment process and schedule, please contact Dr. Holly Stallworth, DFO, by telephone at 202–564–2073 or by email at *stallworth.holly@epa.gov.*

Expertise Sought for the SAB: The SAB was established in 1978 by the Environmental Research, Development and Demonstration Authorization Act to provide independent advice to the Administrator on general scientific and technical matters underlying the agency's policies and actions. The chartered SAB provides strategic advice to the EPA Administrator on a variety of EPA science and research programs. All the work of SAB committees and panels is under the direction of the chartered SAB. The chartered SAB reviews all SAB committee and panel draft reports and determines whether they are appropriate to send to the EPA Administrator.

The SAB Staff Office is seeking nominations of experts to serve on the chartered SAB in the following disciplines as they relate to the human health and the environment: *Ecological sciences and ecological assessment; economics; engineering; geochemistry, health disparities; health sciences; medicine; microbiology; modeling; pediatrics; public health; risk assessment; social, behavioral and decision sciences; and statistics.* The SAB Staff Office is especially interested in scientists with expertise described above who have knowledge and experience in *air quality; climate change; energy and the environment; water quality; water quantity; water re-use; ecosystem services; community environmental health; sustainability; chemical safety; green chemistry; human health risk assessment; homeland security; and waste management.* For further information about the SAB membership appointment process and schedule, please contact Dr. Angela Nugent, DFO, by telephone at 202–564–2218 or by email at *nugent.angela@epa.gov.*

The SAB Staff Office is also seeking nominations for experts for six SAB committees: The Chemical Assessment Advisory Committee; the Drinking Water Committee; the Ecological Processes and Effects Committee; the Environmental Economics Advisory Committee; the Environmental Engineering Committee; and the Radiation Advisory Committee.

(1) The SAB Chemical Assessment Advisory Committee (CAAC) provides advice through the chartered SAB regarding selected toxicological reviews of environmental chemicals available on EPA's Integrated Risk Information System (IRIS). The SAB Staff Office is seeking nominations of experts with experience in chemical assessments. Members should have expertise in one or more of the following disciplines: *Public health; epidemiology; toxicology; modeling; biostatistics; risk assessment; and health disparities.* For further information about the CAAC membership appointment process and schedule, please contact Dr. Suhair Shallal, DFO, by telephone at 202–564–2057 or by email at *shallal.suhair@epa.gov.*

(2) The SAB Drinking Water Committee (DWC) provides advice on the scientific and technical aspects of EPA's national drinking water program. The SAB Staff Office is seeking nominations of experts with experience in drinking water issues. Members should have expertise in one or more of the following disciplines: Epidemiology*; infectious disease; microbiology; and public health.* For further information about the DWC membership appointment process and schedule, please contact Mr. Thomas Carpenter, DFO, by telephone at 202–564–4885 or by email at *carpenter.thomas@epa.gov.*

(3) The SAB Ecological Processes and Effects Committee (EPEC) provides advice on science and research to assess, protect and restore the health of ecosystems. The SAB Staff Office is seeking nominations of experts with demonstrated expertise in the following disciplines: *Landscape ecology; terrestrial ecology; systems ecology; and ecological risk assessment.* For further information about the EPEC membership appointment process and schedule, please contact Dr. Thomas Armitage, DFO, by telephone at 202–564–2155 or by email at *armitage.thomas@epa.gov.*

(4) The SAB Environmental Economics Advisory Committee (EEAC) provides advice on methods and analyses related to economics, costs, and benefits of EPA environmental programs. The SAB Staff Office is seeking nominations of experts in *environmental economics* to serve on the EEAC. For further information about the EEAC membership appointment process and schedule, please contact Dr. Holly Stallworth, DFO, by telephone at 202–564–2073 or by email at *stallworth.holly@epa.gov.*

(5) The SAB Environmental Engineering Committee (EEC) provides advice on risk management technologies to control and prevent pollution. The SAB Staff Office is seeking nominations of experts in *geochemistry; hazardous and solid waste management; and wastewater treatment* to serve on the EEC. For further information about the EEC membership appointment process and schedule, please contact Mr. Edward Hanlon, DFO, by telephone at 202–564–2134 or by email at *hanlon.edward@epa.gov.*

(6) The Radiation Advisory Committee (RAC) provides advice on radiation protection, radiation science, and radiation risk assessment. The SAB

Staff Office is seeking nominations of experts to serve on the RAC with demonstrated expertise in the following disciplines: *Radiation epidemiology; risk assessment as related to cancer risks from exposures to environmental radiation;* and *biostatistics.* For further information about the RAC membership appointment process and schedule, please contact Mr. Edward Hanlon, DFO, by telephone at 202–564–2134 or by email at *hanlon.edward@epa.gov.*

Selection Criteria for the CASAC, SAB and six SAB Committees includes:

—Demonstrated scientific credentials and disciplinary expertise in relevant fields;
—Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees;
—Background and experiences that would help members contribute to the diversity of perspectives on the committee, e.g., geographic, economic, social, cultural, educational backgrounds, professional affiliations; and other considerations; and
—For the committee as a whole, consideration of the collective breadth and depth of scientific expertise; and a balance of scientific perspectives.

As these committees undertake specific advisory activities, the SAB Staff Office will consider two additional criteria for each new activity: absence of financial conflicts of interest and absence of an appearance of a loss of impartiality.

How To Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to these advisory committees. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) following the instructions for ''Nominating Experts for Annual Membership'' provided on the SAB Web site. The form can be accessed through the ''Nomination of Experts'' link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.* To be considered, all nominations should include the information requested. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

Nominators are asked to identify the specific committee for which nominees are to be considered. The following information should be provided on the nomination form: Contact information for the person making the nomination; contact information for the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's *curriculum vitae;* and a biographical sketch of the nominee indicating current position, educational background; research activities; sources of research funding for the last two years; and recent service on other national advisory committees or national professional organizations. To help the agency evaluate the effectiveness of its outreach efforts, please indicate how you learned of this nomination opportunity. Persons having questions about the nomination process or the public comment process described below, or who are unable to submit nominations through the SAB Web site, should contact the Designated Federal Officer for the committee, as identified above. The DFO will acknowledge receipt of nominations and in that acknowledgement will invite the nominee to provide any additional information that the nominee feels would be useful in considering the nomination, such as availability to participate as a member of the committee; how the nominee's background, skills and experience would contribute to the diversity of the committee; and any questions the nominee has regarding membership. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab.* Public comments on this List of Candidates will be accepted for 21 days from the date the list is posted. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

Candidates invited to serve will be asked to submit the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a loss of impartiality, as defined by Federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.*

Dated: April 4, 2013.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2013–08690 Filed 4–11–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2013–0027]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP087136XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP087136XX.

Purpose and Use

Brief description of the purpose of the transaction: To support the export of U.S.-manufactured aircraft to Kazakhstan. Brief non-proprietary description of the anticipated use of the items being exported: To be used for long-haul passenger service between Kazakhstan and destinations in Russia, Europe, and Asia.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: The Boeing Company
Obligor: Air Astana JSC
Guarantor(s): N/A

Description of Items Being Exported

Boeing 767 aircraft

Information On Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/newsandevents/boardmeetings/board/.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before May 7, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *www.regulations.gov*. To submit a comment, enter EIB–2013–0027 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0027 on any attached document.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2013–08530 Filed 4–11–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: April 8, 2013.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10472	Gold Canyon Bank	Gold Canyon	AZ	4/5/2013

[FR Doc. 2013–08614 Filed 4–11–13; 8:45 am]

BILLING CODE 6714–01–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 April 29, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Kevin Lee Mulder,* Minneapolis, Minnesota; to become a member of the Mulder Family Group and acquire voting shares of PSB Financial Shares, Inc., and thereby indirectly acquire voting shares of PrinsBank, both in Prinsburg, Minnesota.

Board of Governors of the Federal Reserve System, April 9, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–08631 Filed 4–11–13; 8:45 am]

BILLING CODE 6210–01–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 May 9, 2013.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Hopfed Bancorp, Inc.,* Hopkinsville, Kentucky; to become a bank holding company through the conversion of its wholly owned subsidiary, Heritage Bank, Hopkins,

Kentucky, from a federally chartered savings bank to a state charted commercial bank.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Henderson Citizens Bancshares, Inc.,* Henderson, Texas; to acquire 100 percent of the voting shares of The East Texas National Bank of Palestine, Palestine, Texas.

Board of Governors of the Federal Reserve System, April 9, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–08630 Filed 4–11–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 121 0184]

Bosley, Inc., a Corporation, and Aderans America Holdings, Inc., a Corporation, and Aderans Co., Ltd., a Corporation; Analysis to Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 8, 2013.

ADDRESSES: Interested parties may file a comment at *http://ftcpublic.commentworks.com/ftc/bosleyaderansconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Bosley Aderans, File No. 121 0184'' on your comment and file your comment online at *http://ftcpublic.commentworks.com/ftc/bosleyaderansconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Justin Stewart-Teitelbaum (202–326–3597), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 8, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 8, 2013. Write ''Bosley Aderans, File No. 121 0184'' 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 have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, 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 *http://ftcpublic.commentworks.com/ftc/bosleyaderansconsent* 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 ''Bosley Aderans, File No. 121 0184'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW, Washington, DC 20580. 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 appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 8, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Bosley,

[1] 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).

Inc. (''Bosley''), and its corporate parents, Aderans America Holdings, Inc. (''Aderans America'') and Aderans Co., Ltd. (''Aderans'') (collectively, ''Respondents''). Bosley is the largest manager of medical/surgical hair transplantation practices in the United States. The Commission's Complaint alleges that Bosley facilitated coordination and endangered competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by exchanging competitively sensitive, nonpublic information with HC (USA), Inc. (''Hair Club''). Bosley indicated that it exchanged similar information with other medical/surgical hair transplantation practitioners.[2]

The proposed Consent Agreement would resolve competitive concerns by requiring Bosley: (1) Not to communicate competitively sensitive, nonpublic information with any competitor; (2) not to request, encourage, or facilitate communication of competitively sensitive, nonpublic information from any competitor; and (3) to institute an antitrust compliance program to assure ongoing compliance with the proposed Decision and Order (''Order'') and with U.S. antitrust laws.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make final the proposed Order.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis does not constitute an official interpretation of the Consent Agreement or the proposed Order, nor does the analysis modify their terms in any way. Further, the Consent Agreement has been entered into for settlement purposes only, and does not constitute an admission by Respondents that they violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

I. The Complaint

The allegations of the Complaint are summarized below.

Bosley and Hair Club are managers of medical/surgical hair transplantation with nationwide geographic presence and national brand recognition. Bosley is the largest such manager in the United States. For at least four years, the chief executive officers (''CEOs'') of Bosley and Hair Club repeatedly exchanged competitively sensitive, nonpublic information about their companies' medical/surgical hair transplantation practices. The information exchanged included details about future product offerings, surgical hair transplantation price floors and discounts, plans for expansion and contraction, and business operations and performance. At the time the CEOs exchanged the information, it was not publicly available.

Bosley considered the information exchanges to be business as usual, and as alleged in the Complaint, Bosley indicated that it had similar communications with other competitors.

II. Analysis

Competition may be unreasonably restrained whenever a competitor directly communicates, solicits, or facilitates exchange of competitively sensitive information with its rivals, particularly where such information is highly detailed, disaggregated, and forward-looking. The risks posed by such communications are three-fold. First, a discussion of competitively sensitive prices, output, or strategy may mutate into a conspiracy to restrict competition. Second, an information exchange may facilitate coordination among rivals that harms competition, even in the absence of any explicit agreement regarding future conduct. Third, knowledge of a competitor's plans reduces uncertainty and enables rivals to restrict their own competitive efforts, even in the absence of actual coordination.

According to the Commission's Complaint, by directly and repeatedly exchanging competitively sensitive, nonpublic information with Hair Club and other rivals, Bosley engaged in unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. The Commission's Complaint alleges that Bosley and Hair Club exchanged information on competitively sensitive subjects, including future plans to close existing facilities and current strategies regarding price discounting. Bosley and Hair Club's alleged tacit understanding to exchange the information could facilitate coordination or endanger competition by reducing uncertainty about a rival's product offerings, prices, and strategic plans. For example, the information exchanges could lead a competitor to determine not to open facilities or market services in a particular location. Alternatively, a competitor might avoid granting additional discounts to maintain existing price levels for surgical hair transplantation services. Any or all of these decisions could result in consumer harm in the form of reduced choice or artificially inflated transaction prices. The potential for harm increases to the extent that Bosley engaged in similar communications with additional rivals.

The Commission must weigh the potential for competitive harm from direct and repeated exchanges of competitively sensitive, nonpublic information against the prospect of legitimate efficiency benefits. The Commission's Complaint alleges that the information exchanges between Bosley and Hair Club served no legitimate business purpose. Specifically, the Commission alleges that in this instance—considering the types of information involved, the level of detail, the direct nature of the communication, and the absence of any related pro-competitive impact—the exchanges were potentially anticompetitive and lacked a legitimate business justification.

III. The Proposed Consent Order

The Consent Agreement signed by Respondents contains a proposed Order resolving the allegations in the Commission's Complaint. First among its provisions, Paragraph II. of the proposed Order enjoins Respondents from communicating competitively sensitive, nonpublic information directly to any hair transplantation competitor. Paragraph II. further prohibits Respondents from requesting, encouraging, or facilitating communication of competitively sensitive, nonpublic information from any competitor.

Paragraph II. of the proposed Order would not interfere with Respondents' ability to compete or prevent participation in legitimate industry practices, such as ordinary trade association or medical society activity. Specifically, the proposed Order excludes from its prohibitions certain communications including: (1) Where the information is reasonably necessary to achieve pro-competitive benefits related to a lawful joint venture or as part of legally supervised due diligence; (2) provision of rates to market research firms or Respondents' own vendors or independent contractors; (3) provision of rates or competitive offers to actual or prospective customers; and (4) receipt of information from competitors for the purpose of legitimate market research

[2] Pursuant to a Stock Purchase Agreement dated July 13, 2012, Aderans plans to acquire all of Hair Club's stock from Regis Corporation for $163.5 million. Therefore, Hair Club is not a respondent to the Consent Agreement.

where the information is not knowingly conveyed to Respondents or their representatives (e.g., competitive intelligence).

In addition, Paragraph III. of the proposed Order requires Respondents to institute programs to ensure compliance with the proposed Order and U.S. antitrust laws. Paragraph III. requires: (1) Annual antitrust compliance training for all Bosley officers, executives, employees, and agents whose positions entail contact with competitors or who have sales, marketing, or pricing responsibility for Respondents' management of medical/surgical hair transplantation practice; (2) the provision of legal support to respond to any questions regarding antitrust compliance or U.S. antitrust laws; and (3) document retention sufficient to record compliance with Respondents' obligations under the proposed Order.

Paragraph IV. requires Respondents to submit periodic compliance reports to the Commission. Respondents must provide an initial compliance report within sixty (60) days from the date the Order becomes final and annually thereafter for the next four (4) years or upon written notice by the Commission.

Pursuant to Paragraph V. of the proposed Order, Respondents must also provide notice to the Commission thirty (30) days prior to any planned dissolution, acquisition, or other change that may affect compliance obligations arising from the proposed Order.

Paragraph VI. gives the Commission access, upon five (5) days written notice, to Respondents' U.S. facilities, records, and employees to ensure on-going compliance.

Paragraph VII. of the proposed Order provides that the proposed Order will expire in twenty (20) years.

By direction of the Commission, Commissioner Wright recused.

Donald S. Clark,

Secretary.

[FR Doc. 2013–08692 Filed 4–11–13; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0297; Docket No. 2012–0001; Sequence 26]

Submission for OMB Review; Proposed Collection; Comment Request; General Services Administration Acquisition Regulation; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (GSA)

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for comments regarding an existing information collection.

SUMMARY: As part of a Federal Government wide effort to streamline the process to seek feedback from the public on service delivery, the General Services Administration (GSA) will be submitting a renewal to the Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA). A notice was published in the **Federal Register** at 77 FR 74191, on December 13, 2012. Two comments were received.

DATES: Submit comments on or before May 13, 2013.

ADDRESSES: Submit comments identified by Information Collection 3090–0297, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–0297'', Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0297'', Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0297'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. Attn: Hada Flowers/IC 3090–0297, Generic Clearance.

Instructions: Please submit comments only and cite Information Collection 3090–0297, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417; telephone (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

Abstract: The information collection activity will 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.

Feedback collected under this generic clearance will provide useful information, but it will 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 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.

The Digital Government Strategy released by the White House in May 2012 drives agencies to have a more customer-centric focus. Because of this, GSA anticipates an increase in requests to use this generic clearance as the plan states that: A customer-centric principle charges us to do several things: Conduct research to understand the customer's business, needs and desires; ''make content more broadly available and accessible and present it through multiple channels in a program- and device-agnostic way; make content more accurate and understandable by maintaining plain language and content freshness standards; and offer easy paths for feedback to ensure we continually improve service delivery. The customer-centric principle holds true whether our customers are internal (*e.g.,* the civilian and military federal workforce in both classified and unclassified environments) or external (*e.g.,* individual citizens, businesses, research organizations, and state, local, and tribal governments).''

B. Discussion and Analysis

A notice was published in the **Federal Register** at 77 FR 74191 on December 13, 2012. Two respondents submitted public comments on the extension of the previously approved information collection. One comment was not in scope of this collection. The analysis of the public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to a Paperwork Reduction Act Generic Clearance (also known as Fast Track Process). Generic Clearance Information Collection Requests (ICRs) provide a significantly streamlined process by which agencies may obtain OMB's approval for particular information collections—voluntary, low-burden, and uncontroversial collections. Generic ICRs are a useful way for agencies to meet the obligations of the Paperwork Reduction Act of 1995 while eliminating unnecessary burdens and delays. They can be used for a number of information collections, including methodological testing, customer satisfaction surveys, focus groups, contests, and Web site satisfaction surveys. Therefore the extension of this information collection actually serves the purpose of reducing the burden on the entity submitting the information and the agency collecting the information.

Comment: The respondent commented that the agency did not accurately estimate the public burden an extension of the information collection requirement would create, and that the agency's methodology for calculating it is insufficient and does not reflect the total burden. The respondent indicated that the Agency's estimate of 145,534 respondents, average burden estimate of 3.82 minutes, and the total burden hours estimated by the Agency of 9,314 appear understated.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on considerations provided by the public. The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. Specific to the approved use of a generic clearance, 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. If this among other conditions is not met, the Agency will submit an information collection request to OMB for approval through the normal PRA process. Careful consideration went into assessing the estimated burden hours for this collection, and it is determined that an upward adjustment is not required at this time.

Comment: The respondent commented that the collective burden of compliance with information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

Response: The Paperwork Reduction Act (PRA) was designed to improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in government and society. A key criteria for using the Fast Track Process for data collection is when participation by respondents is voluntary, not mandatory. The collective burden does not outweigh the utility of the extension.

Comment: The respondent commented that the government's response to the Paperwork Reduction Act Waiver of FAR case 2009 is instructive on the total burden for respondents.

Response: The details of that particular FAR case are not specifically relevant to this notice.

C. Annual Reporting Burden

Below we provide GSA's projected average estimates for the next three years:

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 48.

Respondents: 145,534.

Annual Responses: 48,511.

Frequency of Response: 1.

Average Minutes per Response: 3.82.

Burden hours: 9,314.

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.

Dated: April 5, 2013.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2013–08656 Filed 4–11–13; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–19201–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans

to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0990–0001, which expires on September 30, 2013. Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before June 11, 2013.

ADDRESSES: Submit your comments to *Information.Collection Clearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.Collection Clearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–19201–60D for reference.

Information Collection Request Title: Application for waiver of the two-year foreign residence requirement of the Exchange Visitor Program.

OMB No.: 0990–0001.

Abstract: The J-l visa is an exchange visa which carries a two-year return home requirement. The Department uses form HHS 426 and supplementary information sheets Supplement A—Research and Supplement B—Clinical Care to make a determination, in accordance with its published regulations, as to whether or not to recommend waiver of the two-year foreign residence requirement to the Department of State.

Need and Proposed Use of the Information: Required as part of the application process to collect basic information such as name, address, family status, sponsor and current visa information.

Likely Respondents: Research scientists and research facilities.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. 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. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
HHS 426	80	80	2	160
Total				160

OS specifically requests comments on (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.

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2013–08635 Filed 4–11–13; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Joslyn Manufacturing and Supply Company in Fort Wayne, Indiana, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On March 6, 2013, as provided for under 42 U.S.C. § 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked for Joslyn Manufacturing and Supply Company at the covered facility in Fort Wayne, Indiana, from March 1, 1943, through December 31, 1947, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on April 5, 2013, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on April 5, 2013, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2013–08607 Filed 4–11–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Battelle Laboratories King Avenue facility in Columbus, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees

Occupational Illness Compensation Program Act of 2000. On March 6, 2013, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at the King Avenue facility owned by Battelle Laboratories in Columbus, Ohio, during the period from April 16, 1943, through June 30, 1956, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on April 5, 2013, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on April 5, 2013, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2013–08577 Filed 4–11–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Baker Brothers site in Toledo, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On March 6, 2013, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at the Baker Brothers site in Toledo, Ohio, during the period from June 1, 1943, through December 31, 1944, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on April 5, 2013, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on April 5, 2013, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2013–08579 Filed 4–11–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10003, CMS–10409, and CMS–10461]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this 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 function; (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.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medical Coverage (or Payment). *Use:* Form CMS–10003 is currently separated into a Notice of Denial of Medical Coverage (NDMC) and a Notice of Denial of Payment (NDP). The revised notice that is the subject of this PRA package combines the NDMC and the NDP notices and incorporates text to be inserted if the Medicare health plan enrollee receives full benefits under a State Medical Assistance (Medicaid) program being managed by the plan and the plan denies a service or item that is also subject to Medicaid appeal rights. *Form Number:* CMS–10003 (OCN: 0938–0829). *Frequency:* Occasionally; *Affected Public:* Private sector (business or other for-profit and not-for-profit institutions). *Number of Respondents:* 665. *Total Annual Responses:* 6,960,410. *Total Annual Hours:* 1,159,604. (For policy questions regarding this collection contact Kathryn McCann Smith at 410–786–7623. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Long Term Care Hospital (LCTH) Continuity Assessment Record and Evaluation (CARE) Data Set; *Use:* Section 3004 of the Affordable Care Act authorizes the establishment of a new quality reporting program for long term care hospitals (LTCHs). The LTCHs that fail to submit quality measure data may be subject to a 2 percentage point reduction in their annual update to the standard Federal rate for discharges occurring during a rate year. In the FY 2013 IPPS/LTCH PPS final rule (76 FR 51743 through 51756), CMS retained three National Quality Forum (NQF) measures (NQF #0678, NQF #0138 and NQF #0139) and adopted two new measure (NQF #0680 and NQF#0431) for the FY 2016 payment determination. The NQF #0680 is the percent of residents or patients who were assessed and appropriately given the seasonal influenza vaccine (short-stay). The NQF #0431 is influenza vaccination coverage among healthcare personnel. The data collection for these two NQF endorsed measures will start January 1, 2014.

The LTCH CARE Data Set was developed specifically for use in LTCHs for data collection of NQF #0678 Pressure Ulcer measures beginning October 1, 2012, with the understanding that the data set would expand in future rulemaking years with the adoption of additional quality measures. Relevant data elements contained in other well-known and clinically established data sets, including but not limited to the Minimum Data Set 3.0 (MDS 3.0) and CARE, were incorporated into the LTCH

CARE Data Set V1.01. *Form Number:* CMS–10409 (OCN: 0938–1163); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 442; *Total Annual Responses:* 403,988; *Total Annual Hours:* 212,160. (For policy questions regarding this collection contact Charles Padgett at 410–786–2811. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection (request for a new OMB control number). *Title of Information Collection:* Emergency Department Patient Experience of Care Survey. *Use:* This survey supports the six national priorities for improving care from the National Quality Strategy developed by the U.S. Department of Health and Human Services (HHS) that was called for under the Affordable Care Act to create national aims and priorities to guide local, state, and national efforts to improve the quality of health care. The priorities support a three-part aim focusing on better care, better health, and lower costs through improvement. In this regard, this survey will provide patient experiences with care data that enables making comparisons of emergency departments across the nation and promoting effective communication and coordination. *Form Number:* CMS–10461 (OCN: 0938—New). *Frequency:* Once. *Affected Public:* Individuals and households. *Number of Respondents: Total Annual Responses:* 3,360. *Total Annual Hours:* 799. (For policy questions regarding this collection contact Sai Ma at 410–786–1479. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on May 13, 2013. OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: April 9, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–08677 Filed 4–11–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–460 and CMS–10469]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this 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.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Participating Physician or Supplier Agreement. *Use:* Section 1842(h) of the Social Security Act permits physicians and suppliers to voluntarily participate in Medicare Part B by agreeing to take assignment on all claims for services to Medicare beneficiaries. The law also requires that the Secretary provide specific benefits to the physicians, suppliers and other persons who choose to participate. The CMS–460 is the agreement by which the physician or supplier elects to participate in Medicare. The information is used by: Medicare contractors to provide the benefits the law provides for participating entities and to enable contractors to enforce the Medicare limiting charge for physicians, suppliers and other persons who do not participate; Medicare beneficiaries to assist them in locating physicians who will accept Medicare assignment on claims for services and therefore save them money; and CMS to gauge the effectiveness of our and contractors efforts to increase participation in Medicare. *Form Number:* CMS–460 (OCN: 0938–0373). *Frequency:* Yearly. *Affected Public:* Private sector (business or other for-profits). *Number of Respondents:* 120,000. *Total Annual Responses:* 120,000. *Total Annual Hours:* 30,000. (For policy questions regarding this collection contact April Billingsley at 410–786–0140. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Issuer Reporting Requirements for Selecting a Cost-Sharing Reductions Reconciliation Methodology; *Use:* Under established Department of Health and Human Services (HHS) regulations, qualified health plan (QHP) issuers will receive advance payments of the cost-sharing reductions throughout the year. Each issuer will then be subject to one of two reconciliation processes after the year to ensure that HHS reimbursed each issuer the correct advance cost-sharing amount. This information collection request establishes the data collection requirements for a QHP issuer to report to HHS which reconciliation reporting option the issuer will be subject to for a given benefit year.

On March 23, 2010, the President signed into law H.R. 3590, the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148. Sections 1402 and 1412 of the Affordable Care Act provide for reductions in cost sharing on essential health benefits for low- and moderate-income enrollees in silver level qualified health plans on individual market Exchanges. It also provides for reductions in cost sharing for Indians enrolled in QHPs at any metal level. These cost-sharing reductions will help eligible individuals and families afford the out-of-pocket spending associated with health care services provided through Exchange-based QHP coverage.

The law directs QHP issuers to notify the Secretary of HHS of cost-sharing reductions made under the statute for qualified individuals, and directs the Secretary to make periodic and timely payments to the QHP issuer equal to the value of those reductions. Further, the law permits advance payment of the cost-sharing reduction amounts to QHP issuers based upon amounts specified by the Secretary.

On December 7, 2012, HHS published a proposed rule (77 FR 73118) entitled ''HHS Notice of Benefit and Payment Parameters for 2014.'' This rule proposed a payment approach under which CMS would make monthly advance payments to issuers to cover projected cost-sharing reduction amounts, and then reconcile those advance payments after the end of the benefit year to the actual cost-sharing reduction amounts. The reconciliation process described in the rule would require that QHP issuers provide CMS the amount of cost-sharing paid by each enrollee, as well as the level of cost-sharing that enrollee would have paid under a standard plan without cost-sharing reductions. To determine the amount of cost-sharing an enrollee receiving cost-sharing reductions would have paid under a standard plan, QHP issuers would need to re-adjudicate each claim for these enrollees under a standard plan structure. HHS finalized the proposed notice of benefit and payment parameters for 2014 and this approach on March 11, 2013 (78 FR 15410).

During the comment period to the proposed rule, HHS received numerous comments suggesting that the reporting requirements of the reconciliation process for QHP issuers would be operationally challenging for some issuers. In response to these comments, HHS issued an interim final rule (CMS–9964–IFC) with comment period on March 11, 2013 (78 FR 15541) entitled ''Amendments to the HHS Notice of Benefit and Payment Parameters for 2014,'' which laid out an alternative approach that QHP issuers may elect to pursue with respect to the reporting requirements. This alternative approach would allow a QHP issuer to estimate the amount of cost-sharing an enrollee receiving cost-sharing reductions would have paid under a standard plan in the Exchange, rather than re-adjudicating each of the enrollee's claims. This approach is intended to permit a reasonable transitional period in which QHP issuers will be allowed to choose the methodology that best aligns with their operational practices, which should reduce the administrative burden on issuers in the initial years of the Exchanges. The interim final rule describes the estimation methodology in sufficient detail to allow QHP issuers to make an informed decision of which reporting approach to pursue.

Prior to the start of each coverage year, QHP issuers must notify HHS of the methodology it is selecting for the benefit year. QHP issuers will provide information on which option they choose via the Health Insurance Oversight System (HIOS), a web-based data collection system that is already being used by issuers to provide information for the healthcare.gov Web site. All submissions will be made electronically and no paper submissions are required. The QHP issuer must select the same methodology for all plan variations it offers on the Exchange for a benefit year. Moreover, as the estimated methodology is intended as a transition to the actual methodology, the QHP issuer may not select the estimated methodology if it selected the actual methodology for the prior benefit year. *Form Number:* CMS–10469 (OCN: 0938–NEW); *Frequency:* Annually; *Affected Public:* Private Sector (business or other for-profits); *Number of Respondents:* 1,200; *Total Annual Responses:* 1,200; *Total Annual Hours:* 13,200. (For policy questions regarding this collection contact Chris Weiser at 410–786–0650. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by June 11, 2013:

1. *Electronically.* You may submit 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) 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.

Dated: April 9, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–08676 Filed 4–11–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10463]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this 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.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Cooperative Agreement to Support Navigators in Federally-facilitated and State Partnership Exchanges; *Use:* Section 1311(i) of the Affordable Care Act requires Exchanges to establish a Navigator grant program as part of its function to provide consumers with assistance when they need it. Navigators will assist consumers by providing education about and facilitating selection of qualified health plans (QHPs) within Exchanges, as well as other required duties. Section 1311(i) requires that an Exchange operating as of January 1, 2014, must establish a Navigator Program under which it awards grants to eligible individuals or entities who satisfy the requirements to be Exchange Navigators. For Federally-facilitated Exchanges (FFE) and State Partnership Exchanges (SPEs), CMS will be awarding these grants. Navigator awardees must provide quarterly, bi-annual, and an annual progress report to CMS on the activities performed during the grant period and any sub-awardees receiving funds. *Form Number:* CMS–10463 (OMB#: 0938–NEW); *Frequency:* Annually; Quarterly; *Affected Public:* Private sector *Number of Respondents:*

264; *Total Annual Responses:* 1848; *Total Annual Hours:* 308,352. (For policy questions regarding this collection contact Holly Whelan at 301–492–4220. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by June 11, 2013:

1. *Electronically.* You may submit 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) 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: CMS–10463/OCN–0938–NEW, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 8, 2013 .

Martique Jones,

Deputy Director, Regulations Development Group Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–08672 Filed 4–11–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Non-Competitive One-Year Extension With Funds for Black Lung/Coal Miner Clinics Program (H37) Current Grantee

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA will be issuing a non-competitive one-year extension with funds for the Black Lung/Coal Miner Clinics Program awards to the current grantees (included in attached chart), in amounts between $299,000 and $1.5 million over the one-year extension project period. The level of support is at the same annual rate that was authorized in fiscal year (FY) 2012. The Black Lung/Coal Miner Clinics Program supports projects that seek to prevent, monitor, and treat pulmonary and respiratory diseases in active and inactive miners. This extension with funds will allow the Office of Rural Health Policy (ORHP) to reassess the priorities and scope of the program. The extension will also allow for greater pre-application technical assistance and opportunity to ensure funding levels can adequately address target population needs in various parts of the country.

SUPPLEMENTARY INFORMATION: Grantees of record and intended award amounts are included below.

Amount of the Award(s): Each of the current grantees will receive support at the same annual rate that was authorized in FY 2012: between $299,000 and $1.5 million.

CFDA Number: 93.965.

Current Project Period: 7/1/2010 through 6/30/2013.

Period of Additional Funding: 7/1/2013 through 6/30/2014.

Authority: Sec. 427(a) of the Federal Mine Safety and Health Act of 1977, as amended, (30 U.S.C. 937)

Justification: HRSA is extending funding for the Black Lung/Coal Miner Clinics Program grants by one year for the following reasons: recent information from the Centers for Disease Control and Prevention, National Institute of Occupational Safety and Health (CDC/NIOSH) indicates that the prevalence of coal workers' pneumoconiosis (CWP), also known as black lung disease, is rising. In fact, a recent study of 2,000 coal miners from Utah to Pennsylvania showed five times as many miners have CWP than ten years ago. Many miners are developing severe CWP before 50 years of age, and there is some evidence that this is being manifested as premature mortality. In addition, data from the U.S. Department of Labor show the number of federal black lung benefits claims has increased, suggesting that the disease is also leading to increased significant, long-term disability.

This extension will allow the ORHP to consult providers, experts, and federal partners to thoroughly reassess the priorities and scope of the current program, while taking into account regulatory requirements. It will also provide an opportunity to ensure funding levels as well as program resources are most effectively coordinated with other federal efforts to address growing target population needs.

FOR FURTHER INFORMATION CONTACT: Nadia Ibrahim, MA, LGSW, Health Resources and Services Administration, Office of Rural Health Policy, 5600 Fishers Lane, Room 5A–05, Rockville, Maryland 20857 or email *nibrahim@hrsa.gov*.

Dated: April 4, 2013.

Mary K. Wakefield,

Administrator.

Attachment

Intended Recipients

Organization	Grant number	State	Project start date	Orig. start date	Revised end date	FY10*	FY11**	FY12***
Mountain Comprehensive Health Corporation, Inc.	H37RH00050	KY	7/1/10	6/30/13	6/30/14	$582,993	$581,978	$580,040
Community Health of East Tennessee, Inc	H37RH00052	TN	7/1/10	6/30/13	6/30/14	191,097	190,082	188,144
Shawnee Health Service and Development Corporation.	H37RH00053	IL	7/1/10	6/30/13	6/30/14	872,405	871,390	869,452
Ohio Department of Health	H37RH00054	OH	7/1/10	6/30/13	6/30/14	661,909	660,894	658,965
John H. Strroger Hospital of Cook County	H37RH00055	IL	7/1/10	6/30/13	6/30/14	301,262	300,247	298,309
Miner's Colfax Medical Center	H37RH00057	NM	7/1/10	6/30/13	6/30/14	321,876	320,861	318,923
Northwest Community Action Programs	H37RH00058	WY	7/1/10	6/30/13	6/30/14	300,657	299,642	247,931
Altoona Hospital	H37RH00064	PA	7/1/10	6/30/13	6/30/14	260,086	259,071	257,133
National Jewish Health	H37RH00066	CO	7/1/10	6/30/13	6/30/14	427,000	425,985	424,047
Alveoli Corporation	H37RH00067	PA	7/1/10	6/30/13	6/30/14	149,656	148,641	146,703

Organization	Grant number	State	Project start date	Orig. start date	Revised end date	FY10*	FY11**	FY12***
Birmingham Healthcare for the Homeless Coalition.	H37RH00068	AL	7/1/10	6/30/13	6/30/14	218,267	217,252	215,314
West Virginia Department of Health & Human Resources.	H37RH00046	WV	7/1/10	6/30/13	6/30/14	1,504,940	1,503,925	1,501,700
Centerville Clinics, Inc.	H37RH00047	PA	7/1/10	6/30/13	6/30/14	333,403	332,388	330,450
St. Charles Health	H37RH00048	VA	7/1/10	6/30/13	6/30/14	567,663	566,648	564,710
Coal Miners Respiratory Clinic of Greenville (Muhlenberg Community Hospital).	H37RH00049	KY	7/1/10	6/30/13	6/30/14	353,471	352,456	350,518

* Each grantee received a $4,000 supplement, which is not reflected in the total funding for each organization.
** Each grantee received a $4,824 supplement, which is not reflected in the total funding for each organization.
*** Each grantee received a $5,337 supplement, which is not reflected in the total funding for each organization.

[FR Doc. 2013–08482 Filed 4–11–13; 8:45 am]
BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Extension of Public Comment Period for Request for Information on the FY 2013–2018 Strategic Plan for the Office of Disease Prevention

SUMMARY: The Office of Disease Prevention (ODP), National Institutes of Health (NIH), is amending the due date for responses to its Request for Information (RFI), published in Vol. 78, Issue 49, of the **Federal Register** on March 13, 2013. The due date has been extended from April 14, 2013, to April 30, 2013, to allow more time for review. Comments must be submitted electronically using the web-based form available at *http://prevention.nih.gov/aboutus/strategic_plan/rfi.aspx.*

FOR FURTHER INFORMATION CONTACT: Please direct all inquiries to Wilma Peterman Cross, M.S., Senior Public Health Advisor, Office of Disease Prevention, National Institutes of Health; phone, 301–496–1508; email, *prevention@mail.nih.gov.*

Dated: April 8, 2013.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2013–08683 Filed 4–11–13; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review ; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Alcohol and Reward.

Date: May 8–9, 2013.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genes Genetics and Genomes.

Date: May 8, 2013.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA DA13–003: Tobacco Centers of Regulatory Science for Research, Relevant to the Family Smoking Prevention and Tobacco Control Act (P50).

Date: May 9–10, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Rd. NW., Washington, DC 20015.

Contact Person: Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Behavioral Interventions to Address Multiple Chronic Health Conditions in Primary Care.

Date: May 9, 2013.

Time: 11:00 a.m. to 2:00 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: Priscah Mujuru, RN, MPH, DRPH, COHNS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *mujurup@mail.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: April 8, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08561 Filed 4–11–13; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract

proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: May 15, 2013.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Jeanette Johnson, Ph.D., Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 8, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08564 Filed 4–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy And Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning and Implementation Grants and Cooperative Agreements (R34, R01, U01).

Date: May 9, 2013.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Lakshmi Ramachandra, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *Ramachandral@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 8, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08560 Filed 4–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Cell Dead.

Date: May 13, 2013.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD, (Telephone Conference Call).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Changing Long Term Care in America.

Date: May 20, 2013.

Time: 1 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alfonso Latoni, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702.

Name of Committee: National Institute on Aging Special Emphasis Panel; DNA Damage, Repair, and Aging I.

Date: May 29, 2013.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Medicare Delivery.

Date: June 4, 2013.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20896.

Contact Person: Jeanette Johnson, Ph.D., Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Presenilins and Alzheimer's Disease.

Date: June 12, 2013.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Prevention.

Date: July 11, 2013.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Jeanette Johnson, Ph.D., Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Stress and Aging I.

Date: July 11, 2013.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Prevention.

Date: July 11, 2013.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Jeanette Johnson, Ph.D., Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Juvenile Protective Factors.

Date: July 19, 2013.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Jeanette Johnson, Ph.D., Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 8, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08563 Filed 4–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy And Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID AIDS Vaccine Research Subcommittee.

Date: June 5, 2013.

Time: 8 a.m. to 5 p.m.

Agenda: The AIDS Vaccine Research Subcommittee (AVRS), a subcommittee of the NIAID AIDS Research Advisory Committee (ARAC) will meet on June 5, 2013, in Bethesda to review DAIDS's research portfolio and discuss future research plans.

Place: National Institutes of Health, Building 10, FAES Academic Center, 10 Center Drive, Bethesda, MD 20892.

Contact Person: James A. Bradac, Ph.D., Chief, Preclinical Research and Development Branch, Division of AIDS, Room 5134, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7628, 301–435–3754, *jbradac@mail.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 8, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08565 Filed 4–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and Related Research.

Date: April 25, 2013.

Time: 10:00 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: Mary Clare Walker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: April 8, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08562 Filed 4–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0005; OMB No. 1660–0017]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use. FEMA is also correcting 1660–0017's February 5, 2013 **Federal Register** Notice, in this **Federal Register** Notice.

DATES: Comments must be submitted on or before May 13, 2013.

ADDRESSES: 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 Desk Officer for the Department of Homeland

Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA is using this 30-day **Federal Register** Notice to correct the 60-day **Federal Register** Notice, which FEMA published on February 5, 2013 at 78 FR 8161. FEMA made some mathematical errors in its calculations of the *Number of Responses* and the *Estimated Total Annual Burden Hours.* Therefore, FEMA has corrected those numbers in this 30-day **Federal Register** Notice.

Collection of Information

Title: Public Assistance Program.

Type of information collection: Revision of a currently approved information collection.

Form Titles and Numbers: FEMA Form 009–0–49 Request for Public Assistance; FEMA Form 009–0–91 Project Worksheet (PW); FEMA Form 009–0–91A Project Worksheet (PW)—Damage Description and Scope of Work Continuation Sheet; FEMA Form 009–0–91B Project Worksheet (PW)—Cost Estimate Continuation Sheet; FEMA Form 009–0–91C Project Worksheet (PW)—Maps and Sketches Sheet; FEMA Form 009–0–91D Project Worksheet (PW)—Photo Sheet; FEMA Form 009–0–120 Special Considerations Questions; FEMA Form 009–0–121 PNP Facility Questionnaire; FEMA Form 009–0–123 Force Account Labor Summary Record; FEMA Form 009–0–124 Materials Summary Record; FEMA Form 009–0–125 Rented Equipment Summary Record; FEMA Form 009–0–126 Contract Work Summary Record; FEMA Form 009–0–127 Force Account Equipment Summary Record; FEMA Form 009–0–128 Applicant's Benefits Calculation Worksheet; and FEMA Form 009–0–111, Quarterly Progress Reports.

Abstract: The information collected is utilized by FEMA to make determinations for Public Assistance grants based on the information supplied by the respondents.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 56.

Number of Responses: 346,940 (previously 347,123).

Estimated Total Annual Burden Hours: 361,766 (previously 341,655).

Estimated Cost: There are no record keeping, capital, start-up maintenance costs associated with this information collection.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–08617 Filed 4–11–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5681–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of

publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Avenue SE., Ste. 1000, Washington, DC 20374, (202) 685–9426; (These are not toll-free numbers).

Dated: April 4, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 04/12/2013

SUITABLE/AVAILABLE PROPERTIES

Building

Alaska

FCC Monitoring Station & Res.
Agent's Office
6721 Raspberry Rd.
Anchorage AK 99502
Landholding Agency: GSA
Property Number: 54201310010
Status: Surplus
GSA Number: 9–Z–AK–0836
Directions: 131.02 acres w/3 buildings
Comments: main bldg. = 2,554 sf.; monitoring bldg. = 2,400 sf.; garage= 1,900 sf.; portion of property located w/in airport noise zones that are not compatible w/residential or school uses (14 CFR Part 150)

Virginia

5 Buildings
Marine Corps Base
Quantico VA 22134
Landholding Agency: Navy
Property Number: 77201310005
Status: Excess
Directions: 3218, 27220, 3193, 24150, 2016
Comments: off-site removal only; sf. varies; misc. support; very poor conditions; contact Navy re: details on a specific property

Washington

Old Bellingham Border Patrol Station
2745 McLeod Rd.
Bellingham WA 98225
Landholding Agency: GSA
Property Number: 54201310011
Status: Excess
GSA Number: 9–Z–WA–1264
Directions: two buildings, an office & garage/storage facility; totaling approx. 4,320 sf.
Comments: 12 months vacant; good conditions

[FR Doc. 2013–08242 Filed 4–11–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DR5A311.IA000113]

Secretarial Commission on Indian Trust Administration and Reform

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Office of the Secretary is announcing that the Secretarial Commission on Indian Trust Administration and Reform (the Commission) will hold a public meeting on April 29, 2013. During the public meeting, the Commission will: gain insights about how the UN Declaration can be implemented in support of tribes; hear the top three recommendations from tribal representatives and members of the United South and Eastern Tribes, Inc., that would improve or strengthen trust management and/or administration; update the public regarding draft recommendations and receive public comments; and attend to operational activities of the Commission.

DATES: The Commission's public meeting will begin at 8 a.m. and end at 5 p.m. on April 29, 2013. Members of the public who wish to attend should RSVP by April 24, 2013, to: *trustcommission@ios.doi.gov.* Members of the public who wish to participate via virtual meeting should register at *https://www1.gotomeeting.com/register/893317865* by April 24, 2013, and instructions on how to join the meeting will be sent to your email address. Virtual participation is limited to 100 participants.

ADDRESSES: The public meeting will be held at One Century Place Conference Center, Conference Room #104, 26 Century Blvd., Nashville, TN 37214. We encourage you to RSVP to *trustcommission@ios.doi.gov* by April 24, 2013.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Lizzie Marsters, Chief of Staff to the Deputy Secretary, Department of the Interior, 1849 C Street NW., Room 6118, Washington, DC 20240; or email to *Lizzie_Marsters@ios.doi.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Secretarial Commission on Indian Trust Administration and Reform was established under Secretarial Order No. 3292, dated December 8, 2009. The Commission plays a key role in the Department's ongoing efforts to empower Indian nations and strengthen nation-to-nation relationships.

The Commission will complete a comprehensive evaluation of the Department's management and administration of the trust assets within a two-year period and offer recommendations to the Secretary of the Interior on how to improve in the future. The Commission will:

(1) Conduct a comprehensive evaluation of the Department's management and administration of the trust administration system;

(2) Review the Department's provision of services to trust beneficiaries;

(3) Review input from the public, interested parties, and trust beneficiaries which should involve conducting a number of regional listening sessions;

(4) Consider the nature and scope of necessary audits of the Department's trust administration system;

(5) Recommend options to the Secretary to improve the Department's management and administration of the trust administration system based on information obtained from the Commission's activities, including whether any legislative or regulatory changes are necessary to permanently implement such improvements; and

(6) Consider the provisions of the American Indian Trust Fund Management Reform Act of 1994 providing for the termination of the Office of the Special Trustee for American Indians, and make recommendations to the Secretary regarding any such termination.

Meeting Details

On Monday, April 29, 2013, the Commission will hold a meeting open to the public. The following items will be on the agenda:

Monday, April 29, 2013

- Invocation;
- Welcome, introductions, agenda review;
- Presentation and discussion on UN Declaration on the Rights of Indigenous Peoples and International Trust Models;
- Panel session regarding the Vision of Trust Management Model, Responsibility and Reform;
- Commission Operations Reports and Decision Making;
- Panel session regarding Trust Reform and Administration;

• Commission review and discussion of preliminary recommendations and public comment;

• Closing thoughts from United South and Eastern Tribes, Inc.;

• Review action items, meeting accomplishments; and

• Closing blessing, adjourn.

Written comments may be sent to the Designated Federal Official listed in the **FOR FURTHER INFORMATION CONTACT** section above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public. To review all related material on the Commission's work, please refer to *http://www.doi.gov/cobell/commission/index.cfm.*

Dated: April 8, 2013.

David J. Hayes,

Deputy Secretary.

[FR Doc. 2013–08616 Filed 4–11–13; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2012–N250; 1265–0000–10137–S3]

Sheldon National Wildlife Refuge Humboldt and Washoe Counties, NV, and Lake County, OR; Record of Decision for Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the record of decision (ROD) for the final environmental impact statement (EIS) for the Sheldon National Wildlife Refuge (Refuge). We completed a thorough analysis of the environmental, social, and economic considerations and presented it in our Final Comprehensive Conservation Plan (CCP) and EIS, which we released to the public on August 24, 2012.

DATES: The Regional Director, Pacific Region, U.S. Fish and Wildlife Service, signed the ROD on September 27, 2012.

ADDRESSES: You may view or obtain copies of our final CCP and ROD by any of the following methods:

Agency Web site: Download a copy of the document(s) at *http://www.fws.gov/pacific/planning/main/docs/NV/docssheldon.htm.*

Email: Sheldon-Hart@fws.gov. Include ''Sheldon Refuge ROD'' in the subject line of the message.

Mail: Sheldon-Hart Mountain National Wildlife Refuge Complex, P.O. Box 111, Lakeview, OR 97630.

Fax: (541) 947–4414.

In-person viewing: Copies of the final CCP/EIS and ROD may be viewed at the Sheldon-Hart Mountain National Wildlife Refuge Complex, 20995 Rabbit Hill Road, Lakeview, Oregon.

Local Libraries: The final documents are also available for review at the libraries listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Aaron Collins, (541) 947–3315 ext. 223.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we complete the CCP planning process for the Refuge. We started this process with a **Federal Register** notice (73 FR 27003; May 12, 2008). We released the draft CCP/EIS to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (76 FR 55937; September 9, 2011). We announced the availability of the final CCP/EIS in the **Federal Register** (77 FR 51556) on August 24, 2012.

The Refuge encompasses 575,000 acres of sagebrush-steppe habitat located in a remote area of northwest Nevada and southeast Oregon. The Refuge resides in the Great Basin, and was established in 1931 for the conservation and protection of the once-imperiled American pronghorn. Sheldon Refuge (along with the Hart Mountain National Antelope Refuge) now conserves habitat for a number of native, rare, and imperiled species of fish, wildlife, and plants that depend upon the sagebrush-steppe ecosystem.

In accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements, this notice announces the availability of the ROD for the Refuge's final CCP/EIS. We completed a thorough analysis of the environmental, social, and economic considerations, which we included in the final CCP/EIS, and evaluated three management alternatives for the Refuge. The ROD documents our selection of Alternative 2, the preferred alternative, in the final CCP/EIS. The CCP will guide us in managing and administering the Refuge for the next 15 years. Alternative 2, as we described in the final CCP/EIS and ROD, is the foundation for the CCP.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (together referred to as the Refuge Administration Act), 16 U.S.C. 668dd–668ee, requires us to develop a CCP for each refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

CCP Alternatives and Selected Alternatives

We identified several issues in our draft CCP/EIS. To address these, we developed and evaluated the following Refuge management alternatives.

Alternative 1 (No Action Alternative)

Under Alternative 1, the no-action alternative, we would assume no change from current management; this alternative is considered the base from which to compare the other two alternatives. We would continue to focus our management activities on maintaining relatively stable populations of approximately 800 feral horses and 90 feral burros on Refuge lands. Fish populations in Big Spring Reservoir would be maintained through continued stocking of sterile rainbow trout. Our management of Refuge habitats would continue to include the use of prescribed fire and mechanical treatments to achieve habitat management objectives.

Current public uses including hunting, fishing, guiding, research, rock collecting, wildlife observation, photography, environmental education, and interpretation would continue. Opportunities to expand public uses or reduce ongoing resource impacts from public uses would be limited. Designated campgrounds and roads would be maintained at their current locations. We would continue to protect the natural primitive character and other resource values of the Refuge's 341,500 acres recommended for wilderness designation in 1974, and provide opportunities for solitude and primitive recreation. Inventory, monitoring, and cultural and historic resources protection would continue to occur on the Refuge.

Alternative 2 (Preferred Alternative)

Under Alternative 2, our preferred alternative, current fish, wildlife, habitat, and public use management would continue, with the following key enhancements. Native habitat conditions would improve, by removing

all feral horses and burros from the Refuge within 5 years. Populations of trout species indigenous to the region—Lahontan cutthroat trout, Alvord cutthroat trout, or redband trout—would be maintained through restocking if necessary, replacing nonnative rainbow trout in Big Spring Reservoir and Virgin Creek. Control of noxious weeds and other invasive plants would increase, including weed control along road corridors. Western juniper would be removed where it is encroaching on sagebrush-steppe habitats. Degraded habitats would be rehabilitated and restored, using management techniques such as seeding, erosion control structures, and recontouring. Abandoned livestock water developments would be removed, and spring, playa, wet meadow, and stream habitats would be restored to more natural conditions where beneficial to wildlife.

Recreation opportunities would improve by relocating and enlarging the visitor contact station, improving campground facilities, developing an accessible interpretive trail, creating a self-guided auto tour route, and improving signage of vehicle routes. We would reopen existing routes, following revisions to proposed Refuge wilderness area boundaries. Maintenance of improved gravel roads would occur more frequently. We would relocate up to nine campgrounds, and realign road segments to reduce erosion and impacts to sensitive riparian areas and cultural resources. Seasonal road closures would be implemented as appropriate, to protect sensitive species and habitats.

A larger portion of Sheldon Refuge (424,360 acres) would be recommended for wilderness designation and managed for wilderness character under Alternative 2, encompassing some of the lands identified in Alternative 1, and additional wilderness study areas identified in the 2009 Sheldon Refuge Wilderness Review. We would increase our inventory and protection of historic and cultural resources, and improve historic and cultural resources interpretation.

Alternative 3

Under Alternative 3, changes to current management would include removing all feral horses and burros from the Refuge over a period of 15 years; replacing nonnative trout in Big Spring Reservoir with trout species indigenous to the region, but not maintaining the trout population through restocking; and managing habitats by creating conditions where natural processes such as fire could be allowed more frequently with less dependence on prescribed fire and other intensive management actions. Current public uses would continue; however, some facilities would be consolidated and some uses would be curtailed. Vehicle access to the Refuge would be reduced under Alternative 3 due to the closure of two roads and road maintenance limited to main routes, resulting in fewer miles of primitive routes open to the public.

The area managed for wilderness character would include 236,791 acres, which would provide less long-term protection and preservation of wilderness values than the other alternatives. In addition, Alternative 3 would provide the least amount of protection and preservation of historic resources, compared to the other alternatives.

Selected Alternative

After considering the comments we received, we selected Alternative 2, our preferred alternative, for implementation on the Refuge. Alternative 2 would result in the greatest improvements to native habitat conditions throughout the Refuge, would best meet the Service's policies and directives, is compatible with the Refuge's purposes, and would maintain balance among the Refuge's varied management needs and programs.

Public Availability of Documents

In addition to the methods in **ADDRESSES**, you can view the CCP at the following libraries.

- Lake County Public Library, 513 Center St., Lakeview, OR.
- Humboldt County Public Library, 85 East Fifth St., Winnemucca, NV.
- Washoe County Public Library, 301 South Center St., Reno, NV

Dated: April 4, 2013.

Richard R. Hannan,

Acting Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2013–08740 Filed 4–11–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L16100000.DP000/ LXSS024G0000]

Notice of Availability of the Draft Tri-County Resource Management Plan and Draft Environmental Impact Statement for the Las Cruces District Office, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the Tri-County planning area in the Las Cruces District Office and by this notice is announcing the opening of the public comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/Draft EIS within 90 days following the date the Environmental Protection Agency publishes its notice of the filing of the Draft RMP/Draft EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Tri-County Draft RMP/Draft EIS by any of the following methods:

- *Web site: www.blm.gov/nm/tricountyrmp*
- *Email: BLM_NM_LCDO_comments@blm.gov*
- *Fax:* 575–525–4412, Attention: Tri-County Comments
- *Mail:* BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005–3371, Attention: Tri-County Comments

Copies of the Tri-County Draft RMP/Draft EIS are available at the Las Cruces District Office, at the above address; the New Mexico State BLM Office at 301 Dinosaur Trail, Santa Fe, NM; the Albuquerque District BLM Office at 435 Montano Rd. NE., Albuquerque, NM; the Socorro BLM Field Office at 901 South Highway 85, Socorro, NM; the Carlsbad BLM Field Office at 620 East Greene St., Carlsbad, NM; and the Pecos District Office at 2909 West Second St., Roswell, NM.

FOR FURTHER INFORMATION CONTACT: Jennifer Montoya, Planning and Environmental Coordinator; telephone 575–525–4316; address 1800 Marquess Street, Las Cruces, New Mexico 88005–3371; email *jamontoy@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 service 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: In the Tri-County Draft RMP/Draft EIS, the BLM analyzes the environmental consequences of four land use plan alternatives under consideration for managing approximately 2.8 million acres of surface estate and 4.0 million acres of subsurface mineral estate. These lands, administered by the BLM Las Cruces District Office, are located within Sierra, Otero, and Doña Ana counties in southern New Mexico.

This land use plan would replace the White Sands RMP (1986) and amend the portion of the Mimbres RMP (1993) that addresses Doña Ana County. The RMP revision is needed to provide updated management decisions for a variety of uses and resources, including renewable energy siting, outdoor recreation management, special status species habitat, proposals for special designations, land tenure adjustments, and other issues. The approved Tri-County RMP will apply only to the BLM-administered public land and Federal mineral estate.

The four alternatives analyzed in detail in the Draft RMP/Draft EIS are as follows:

- Alternative A, No Action, or a continuation of existing management;
- Alternative B, which would emphasize resource conservation and protection;
- Alternative C, the BLM's Preferred Alternative, which would provide for a balance of resources uses with protections; and
- Alternative D, which would allow for a greater opportunity for resource use and development.

Among the special designations under consideration within the range of alternatives, Areas of Critical Environmental Concern (ACEC) are proposed to protect certain resource values. Pertinent information regarding these ACECs, including proposed designation acreages and resource-use limitations, is summarized below. Each alternative considers a combination of resource-use limitations for each ACEC. A more detailed summary of the proposed ACECs by alternative is available at the project Web site: *www.blm.gov/nm/tricountyrmp*.

- *Aden Lava Flow ACEC* (Currently 3,746 acres; Alternative B would maintain this acreage; Alternatives C and D would remove the ACEC designation and the area would be managed as part of the Aden Lava Flow WSA.) This ACEC would be managed for biological, scenic, geological, and research resource values. Proposed resource-use limitations include: Exclusion from new rights-of-way; closure to fluid mineral leasing and mineral material sales; using chemical brush control to meet plant community objectives; management as Visual Resource Management (VRM) Class II; designation of a parking area and trail; allowing the research and interpretation of geological objectives; and limitation of vehicle use to designated roads and trails, or closing to vehicle use.
- *Alamo Mountain ACEC* (Currently 2,528 acres; Alternatives B and C would incorporate the existing ACEC into the Otero Mesa Grassland Wildlife ACEC; Alternative D would maintain the ACEC designation at the current acreage.) This ACEC would be managed for scenic, cultural, and ecological resource values. Proposed resource-use limitations include: Exclusion or avoidance of new rights-of-way; closure to fluid mineral leasing and mineral material sales; closure to vegetation sales; management as VRM Class I or II; limitation of vehicle use to designated routes; and closing to vehicle use.
- *Alkali Lakes ACEC* (Currently 6,348 acres; Alternatives B, C, and D would maintain this acreage.) This ACEC would be managed for special status plant species resource values. Proposed resource-use limitations include: Exclusion or avoidance of new rights-of-way; closure to fluid mineral leasing and mineral material sales; closure to vegetation sales; management as VRM Class III or IV; and limitation of vehicle use to designated routes.
- *Broad Canyon ACEC* (Not currently designated as an ACEC; Alternative B would designate 4,721 acres as an ACEC; the area would not be managed as an ACEC under Alternatives C and D.) The ACEC would be managed for scenic, biological, and cultural resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closure to mineral material disposal and geothermal leasing; management as VRM Class II; and limitation of vehicle use to designated routes.
- *Brokeoff Mountains ACEC* (Not currently designated as an ACEC; Alternative B would designate 61,224 acres as an ACEC; Alternative C would designate 3,971 acres as an ACEC; and Alternative D would not manage the area as an ACEC.) The ACEC would be managed for ecological and cultural resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closure to mineral material sales and geothermal leasing; management as VRM Class II; and limitation of vehicle use to designated routes.
- *Caballo Mountains ACEC* (Not currently an ACEC; Alternative B would designate 17,268 acres as an ACEC; the area would not be managed as an ACEC under Alternatives C and D.) The ACEC would be managed for scenic resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closure to mineral material sales and geothermal leasing; management as VRM Class I except for the existing communications site; and limitation of vehicle use to designated routes.
- *Cornucopia ACEC* (Formerly Southern Sacramento Mountains; not currently an ACEC; Alternative B would designate 16,037 acres as an ACEC; the area would not be managed as an ACEC under Alternatives C and D.) The ACEC would be managed for cultural resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closure to mineral material sales and geothermal leasing; management as VRM Class II; and limitation of vehicle use to designated routes.
- *Cornudas Mountains ACEC* (Currently 852 acres; Alternatives B and C would manage this area as part of the Otero Mesa Grassland Wildlife ACEC; Alternative D would maintain the existing ACEC designation with the current acreage.) This ACEC would be managed for scenic and cultural resource values. Proposed resource-use limitations include: Avoidance or exclusion of new rights-of-way; closure to fluid mineral leasing and mineral material sales; management as VRM Class I or II; and limitation of vehicle travel to designated routes.
- *Doña Ana Mountains ACEC* (Currently 1,427 acres; Alternatives B and C would expand the ACEC to 3,181 acres; Alternative D would maintain the current acreage.) The ACEC would be managed for biological, scenic, and cultural resource values. Proposed resource-use limitations include: Exclusion from new rights-of-way; closure to fluid mineral leasing and mineral material sales; management as VRM Class I; and limitation of vehicle use to designated routes.
- *East Potrillo Mountains ACEC* (Not currently an ACEC; Alternative B would manage 11,460 acres as an ACEC; the area would not be managed as an ACEC under Alternatives C and D.) The ACEC would be managed for scenic resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closure to mineral material sales and geothermal leasing; management as VRM Class I; and limitation of vehicle use to designated routes.

• *Jarilla Mountains ACEC* (Not currently an ACEC; Alternative B would designate 6,219 acres as an ACEC; Alternatives C and D would not manage this area as an ACEC.) The ACEC would be managed for special status plant species and ecological resource values. Proposed resource-use limitations include: Avoidance of new rights-of-way; closure to mineral material sales and geothermal leasing; management as VRM Class III; and maintaining vehicle closure on 700 acres while limiting vehicle use to designated routes in the remainder of the ACEC.

• *Los Tules ACEC* (Currently 23 acres; Alternatives B, C, and D would maintain this acreage.) This ACEC would be managed for cultural resource values. Proposed resource-use limitations include: Exclusion from new rights-of-way; closure to mineral material sales; allowing fluid mineral leasing with a No Surface Occupancy (NSO) stipulation; management as VRM Class II or III; closure to vehicle use; and consideration of conveyance to New Mexico Parks Division under the Recreation and Public Purposes Act.

• *Mud Mountain ACEC* (Not currently an ACEC; Alternatives B and C would designate 2,579 acres as an ACEC; the area would not be managed as an ACEC under Alternative D.) The ACEC would be managed for special status plant species and ecological resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closure to mineral material sales and geothermal leasing; and limitation of vehicle use to designated routes.

• *Nutt Mountain ACEC* (Not currently an ACEC; Alternative C would designate 756 acres as an ACEC; the area would not be managed as an ACEC under Alternatives B and D.) The ACEC would be managed for ecological and scenic resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closure to mineral material sales and geothermal leasing; management as VRM Class I; and limitation of vehicle use to designated routes.

• *Organ/Franklin Mountains ACEC* (Currently 58,417 acres; Alternatives B, C, and D would maintain this acreage; 19,667 acres are within Wilderness Study Areas (WSAs).) This ACEC would be managed for biological, scenic, cultural, riparian, and special status species (plant and animal) resource values. Proposed resource-use limitations include: Exclusion from new rights-of-way except within existing utility corridors; closure to fluid mineral leasing and mineral material sales; management as VRM Class I, III, and IV; closure to all but authorized vehicle use; and closure of vehicle routes in WSAs.

• *Otero Mesa Grassland ACEC* (Not currently an ACEC; Alternative B C would designate 271,262 acres as an ACEC; Alternative C would designate 198,511 acres as an ACEC. The area would not be managed as an ACEC under Alternative D.) The ACEC would be managed for ecological and wildlife habitat resource values. Proposed resource-use limitations include: Exclusion and avoidance of new rights-of-way; closure to mineral material sales and geothermal leasing; closure to vegetation sales; management as VRM Class I and II; and limitation of vehicle use to designated routes.

• *Percha Creek ACEC* (Not currently an ACEC; Alternatives B and C would designate 870 acres as an ACEC; Alternative D would not manage this area as an ACEC.) The ACEC would be managed for riparian, ecological, and special status species resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closure to mineral material sales and geothermal leasing; closure to livestock grazing; and close to vehicle use.

• *Picacho Peak ACEC* (Not currently an ACEC; Alternatives B and C would designate 950 acres as an ACEC; the area would not be managed as an ACEC under Alternative D.) The ACEC would be managed for scenic and cultural resource values. Proposed resource-use limitations include: Exclusion from new rights-of-way; closure to mineral material sales and geothermal leasing; management as VRM Class I; and limitation of vehicle use to designated routes.

• *Pup Canyon ACEC* (Not currently an ACEC; Alternatives B and C would designate 3,677 acres as an ACEC; the area would not be managed as an ACEC under Alternative D.) The ACEC would be managed for special status plant species and ecological resource values. Proposed resource-use limitations include: Incorporation into and management as part of the Brokeoff Mountains ACEC; exclusion of new rights-of-way; management as VRM Class II; and limitation of vehicle use to designated routes.

• *Rincon ACEC* (Currently 856 acres; Alternatives B, C, and D would maintain the current acreage.) This ACEC would be managed for cultural resource values. Proposed resource-use limitations include: Exclusion or avoidance of new rights-of-way; exclusion of solar energy projects; exclusion of wind and geothermal energy projects from aplomado falcon habitat and avoidance of wind and geothermal development in the remainder of the ACEC; allowing fluid mineral leasing with NSO; closure to new mineral material sales; management as VRM Class II; and limitation of vehicle use to designated routes.

• *Robledo Mountains ACEC* (Currently 7,077 acres; Alternative B would increase to 19,000 acres, Alternatives C and D would maintain the 7,077 acreage.) This ACEC would be managed for biological, scenic, and cultural resource values. Proposed resource-use limitations include: Exclusion or avoidance of new rights-of-way; closure to fluid mineral leasing and mineral material sales; management as VRM Class I or II; and limitation of vehicle use to designated routes.

• *Sacramento Escarpment ACEC* (Currently 4,474 acres; Alternatives B and C would maintain this acreage; Alternative D would reduce the ACEC to 3,374 acres.) This ACEC would be managed for scenic resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closure to fluid mineral leasing and mineral material sales; management as VRM Class I and II; and limitation of vehicle use to designated routes.

• *Sacramento Mountains (North and South) ACEC* (Not currently an ACEC; Alternatives B and C would designate 2,381 acres as an ACEC; the area would not be managed as an ACEC under Alternative D.) The ACEC would be managed for special status plant species and ecological resource values. Proposed resource-use limitations include: Exclusion or avoidance of new rights-of-way; closure to mineral material sales and geothermal leasing; manage as VRM Class II; limitation of vehicle use to designated routes; and closure to vehicle use.

• *San Diego Mountain ACEC* (Currently 623 acres; Alternatives B, C, and D would maintain this acreage.) This ACEC would be managed for cultural resource values. Proposed resource-use limitations include: Exclusion or avoidance of new rights-of-way; closure to fluid minerals and mineral material sales; management as VRM Class II; and limitation of vehicle use to designated routes.

• *Six Shooter Canyon ACEC* (Not currently an ACEC; Alternatives B and C would designate 1,060 acres as an ACEC; the area would not be managed as an ACEC under Alternative D.) The ACEC would be managed for special status plant species and ecological resource values. Proposed resource-use limitations include: Exclusion of new rights-of-ways; closure to mineral material sales and geothermal leasing; management as VRM Class II; and closure to vehicle use.

• *Southern Caballo Mountains ACEC* (Not currently an ACEC; Alternative B would designate 24,117 acres as an ACEC; the area would not be managed as an ACEC under Alternatives C and D.) The ACEC would be managed for cultural resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closure to geothermal leasing; management as VRM Class II; and limitation of vehicle use to designated routes.

• *Three Rivers Petroglyph Site ACEC* (Currently 1,043 acres; Alternatives B, C, and D would maintain this acreage.) This ACEC would be managed for cultural resource values. Proposed resource-use limitations include: Closure to fluid mineral leasing and mineral material sales; closure to vegetation sales; management as VRM Class II; and limitation of vehicle use to designated routes.

• *Tortugas Mountain ACEC* (Not currently an ACEC; Alternative B would designate 1,936 acres as an ACEC; the area would not be managed as an ACEC under Alternatives C and D.) The ACEC would be managed for soils and geomorphology resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closure to geothermal leasing; management as VRM Class III; allowing traditional uses, religious and other, of the mountain; and limitation of vehicle use to designated routes.

• *Tularosa Creek ACEC* (Not currently an ACEC; Alternatives B and C would designate 236 acres as an ACEC; the area would not be managed as an ACEC under Alternative D.) The ACEC would be managed for riparian and aquatic resource values. Proposed resource-use limitations include: Exclusion of new rights-of-way; closing to mineral material sales and geothermal leasing; closure to livestock grazing; management as VRM Class II; and limitation of vehicle use to designated routes.

• *Wind Mountain ACEC* (Currently 2,300 acres; Alternatives B and C would manage the area as part of the Otero Mesa Grassland Wildlife ACEC; Alternative D would maintain the current acreage.) This ACEC would be managed for cultural and scenic resource values. Proposed resource-use limitations include: Exclusion or avoidance of new rights-of-way; closure to fluid mineral leasing and mineral material sales; closure to vegetation sales; management as VRM Class I or II; and limitation of vehicle use to designated routes.

The land-use planning process was initiated on January 28, 2005, through a Notice of Intent published in the **Federal Register** (70 FR 4146), notifying the public of a formal scoping period and soliciting public participation. Four public scoping meetings were held in March 2005 in Alamogordo, Anthony, Las Cruces, and Truth or Consequences, NM. In April 2005, the Economic Profile System workshops were held in Alamogordo and Truth or Consequences to help the BLM and potential cooperating agencies gain insight on the economic makeup of the Planning Area. Three open-house scoping meetings were held in December 2006 in Las Cruces, Alamogordo, and Truth or Consequences, NM. Four meetings with grazing allottees were held in January 2007 to discuss the RMP process and potential impacts of ACEC management on grazing operations. Between 2005 and 2010, four Planning Bulletins were published to update the community on the RMP progress. Meetings and outreach to cooperating agencies were held throughout the planning process, as were meetings with various stakeholder groups. At the November 2011 meeting of the Las Cruces District Resource Advisory Council, the Tri-County RMP status was discussed.

Las Cruces District Office managers and staff had discussions about the Tri-County Draft RMP/Draft EIS with 11 Native American tribal groups, including the Mescalero Apache Tribe, the Fort Sill Apache Tribe, the White Mountain Apache Tribe, the Ysleta del Sur Pueblo, the Isleta Pueblo, the Hopi Tribe, the Navajo Nation, the Kiowa Tribe, the Comanche Indian Tribe, Tesuque Pueblo, and the Piro-Manso-Tiwa Indian Tribe. During the scoping period ending on March 28, 2005, the public provided the Las Cruces District Office with input on relevant issues to consider in the planning process. Based on these issues, conflicts, information, and the BLM's goals and objectives, the Las Cruces District Office Interdisciplinary RMP Team and managers formulated four alternatives for consideration and analysis in the Draft RMP/Draft EIS.

Following the close of the public review and comment period, any substantive public comments will be used to revise the Draft RMP/Draft EIS in preparation for its release to the public as the Proposed Resource Management Plan and Final Environmental Impact Statement (Proposed RMP/Final EIS). The BLM will respond to each substantive comment received during the public review and comment period by making appropriate revisions to the document, or explaining why the comment did not warrant a change. Notice of the availability of the Proposed RMP/Final EIS will be posted in the **Federal Register**.

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 BLM Las Cruces District Office, 1800 Marquess St., Las Cruces, New Mexico during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except holidays).

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6; 40 CFR 1506.10; 43 CFR 1610.2.

Jesse J. Juen,

New Mexico State Director.

[FR Doc. 2013–08534 Filed 4–11–13; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9:00 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the subdivisional lines and certain mineral surveys, T. 49 N., R. 5 E., Boise Meridian, Idaho, Group Number 1356, was accepted January 5, 2013.

The supplemental plat prepared to correct the ownership status of McRea

Island, as depicted on the plat accepted October 28, 2011, T. 11 N., R. 6 W., Boise Meridian, Idaho, Group Number 1314 was accepted February 20, 2013.

The plat representing the dependent resurvey of portions of the north boundary, subdivisional lines and original 1904–1906 right bank meanders of the Salmon River in section 2, the subdivision of section 2, the survey of a portion of the 2011 right bank meanders of the Salmon River in section 2, the metes-and-bounds survey of a portion of the easterly right-of-way of U.S. Highway No. 95 in section 2, and the survey of lots 11, 12, and 13, in section 2, T. 24 N., R. 1 E., Boise Meridian, Idaho, Group Number 1345 was accepted March 7, 2013.

This survey was executed at the request of the U.S.D.A. Natural Resource Conservation Service to meet their administrative needs. The lands surveyed are:

The plat constituting the dependent resurvey of a portion of the Boise Base Line (south boundary) and subdivisional lines, and the subdivision of section 34, T. 1 N., R. 21 E., Boise Meridian, Idaho, and the plat constituting the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 3 and 10, T. 1 S., R. 21 E., Boise Meridian, Idaho, Group Number 1374, were accepted February 5, 2013.

Dated: April 5, 2013.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2013–08574 Filed 4–11–13; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Gulf of Mexico (GOM), Outer Continental Shelf (OCS), Western Planning Area (WPA) Lease Sale 233 and Central Planning Area (CPA) Lease Sale 231, Oil and Gas Lease Sales MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability (NOA) of the Final Supplemental Environmental Impact Statement (EIS).

Authority: This NOA is published pursuant to the regulations (40 CFR 1503) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq. (1988)).

SUMMARY: BOEM has prepared a Final Supplemental EIS on oil and gas lease sales, including sales tentatively scheduled in 2013 and 2014 in the WPA and CPA offshore the States of Texas, Louisiana, Mississippi, and Alabama. This Final Supplemental EIS updates the environmental and socioeconomic analyses evaluated in the Gulf of Mexico OCS Oil and Gas *Lease Sales: 2012–2017; Western Planning Area Lease Sales 229, 233, 238, 246, and 248; Central Planning Area Lease Sales 227, 231, 235, 241, and 247—Final Environmental Impact Statement* (OCS EIS/EA BOEM 2012–019) (2012–2017 Multisale EIS), completed in July 2012, in advance of proposed WPA Lease Sale 233 and proposed CPA Lease Sale 231.

SUPPLEMENTARY INFORMATION: BOEM developed this Final Supplemental EIS in advance of proposed WPA Lease Sale 233 and proposed CPA Lease Sale 231 to consider new information made available since completion of the 2012–2017 Multisale EIS and to consider new information available regarding the *Deepwater Horizon* explosion, oil spill, and cleanup; surveys of scientific journals and available scientific data and information from academic institutions and Federal, State, and local agencies. This Final Supplemental EIS provides updates on the baseline conditions and potential environmental effects of oil and natural gas leasing, exploration, development, and production in the WPA and CPA. BOEM conducted an extensive search for new information, including but not limited to information related to the *Deepwater Horizon* explosion, oil spill, and cleanup. Subject-matter experts surveyed scientific journals and available scientific data, gathered information, and interviewed personnel from academic institutions and Federal, State, and local agencies. BOEM has examined the potential impacts of routine activities and accidental events, including a possible low-probability, castastrophic event associated with a proposed lease sale, and the incremental contribution of a proposed lease sale to the cumulative impacts on environmental and socioeconomic resources. The oil and gas resource estimates and scenario information for this Final Supplemental EIS are presented as a range that would encompass the resources and activities estimated for a WPA and CPA proposed lease sale.

Final Supplemental EIS Availability: BOEM has printed and will distribute a limited number of paper copies of the EIS. In keeping with the Department of the Interior's mission to protect natural resources and to limit costs while ensuring availability of the document to the public, BOEM will primarily distribute digital copies of this Final Supplemental EIS on compact discs. However, if you require a paper copy, BOEM will provide one upon request if copies are still available.

1. You may obtain a copy of the Final Supplemental EIS from the Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Public Information Office (GM 250G), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394 (1–800–200–GULF).

2. You may download or view the Final Supplemental EIS on BOEM's Internet Web site at *http://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx.*

BOEM has sent copies of the Final Supplemental EIS to several libraries along the Gulf Coast. To find out which libraries have copies of the Final Supplemental EIS for review, you may contact BOEM's Public Information Office or visit BOEM's Internet Web site at *http://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx.*

FOR FURTHER INFORMATION CONTACT: For more information on the Final Supplemental EIS, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Office of Environment (GM 623E), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 or by email at *LS_233–231SEIS@boem.gov.* You may also contact Mr. Goeke by telephone at (504) 736–3233.

Dated: April 9, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–08674 Filed 4–11–13; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[G63–0982–9832–100–96–76, 84–55000]

Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and were pending through December 31, 2012, and contract actions that have been completed or discontinued since the last publication of this notice. From the date

of this publication, future notices during this calendar year will be limited to new, modified, discontinued, or completed contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Water and Environmental Resources Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in This Document

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
LCWSP Lower Colorado Water Supply Project
M&I Municipal and Industrial
O&M Operation and Maintenance
P-SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim irrigation and M&I water service, water storage, water right settlement, exchange, miscellaneous use, or water replacement contracts to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; and Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. Queener Irrigation Improvement District, Willamette Basin Project, Oregon: Renewal of long-term water service contract to provide up to 2,150 acre-feet of stored water from the Willamette Basin Project (a USACE project) for the purpose of irrigation within the District's service area.

6. West Extension ID, Umatilla Project, Oregon: Contract action for

long-term boundary expansion to include lands outside federally recognized District boundaries.

7. Six water user entities of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of the reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

8. Five irrigation water user entities, Rogue River Basin Project, Oregon: Long-term contracts for exchange of water service with five entities for the provision of up to 1,163 acre-feet of stored water from Applegate Reservoir (a USACE project) for irrigation use in exchange for the transfer of out-of-stream water rights from the Little Applegate River to instream flow rights with the State of Oregon for instream flow use.

9. Cowiche Creek Water Users Association and Yakima-Tieton ID, Yakima Project, Washington: Warren Act contract to allow the use of excess capacity in Yakima Project facilities to convey up to 1,583.4 acre-feet of nonproject water for the irrigation of approximately 396 acres of nonproject land.

10. East Columbia Basin ID, Columbia Basin Project, Washington: Supplement No. 3 to the 1976 Master Water Service Contract providing for the delivery of up to 30,000 acre-feet of project water for the irrigation of 10,000 acres located within the Odessa Subarea with an additional 15,000 acre-feet of project water to be made available to benefit stream flows and fish in the Columbia River under this contract or a separate operating agreement.

11. Prineville Reservoir Water Users, Crooked River Project, Oregon: Repayment agreements with spaceholder contractors for reimbursable cost of SOD modifications to Arthur R. Bowman Dam.

12. East Columbia Basin ID, Columbia Basin Project, Washington: Amendment No. 1 to Supplement No. 2 to the 1976 Master Water Service Contract providing for the delivery of up to an additional 5,450.5 acre-feet of project water for the irrigation of 1,816.8 acres located within the Odessa Subarea under this contract.

13. Conagra Foods Lamb Weston, Inc., Columbia Basin Project, Washington: Miscellaneous purposes water service contract providing for the delivery of up to 1,500 acre-feet of water from the Scooteney Wasteway for effluent management.

14. Benton ID, Yakima Project, Washington: Amendatory contract to, among other things, withdraw the District from the Sunnyside Division Board of Control; provide for direct payment of the district's share of total operation, maintenance, repair, and replacement costs incurred by the United States in operation of storage division; and establish district responsibility for operation, maintenance, repair and replacement for irrigation distribution system.

15. Junction City Water Control District, Willamette River Basin Project, Oregon: Irrigation water service contract for approximately 8,000 acre-feet of project water.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users; California, Nevada, and Oregon: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for up to 10,000 acre-feet for use of excess capacity in project facilities for terms up to 5 years; temporary conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually.

2. Contractors from the American River Division, Cross Valley Canal, San Felipe Division, West San Joaquin Division, and Elk Creek Community Services District; CVP; California: Renewal of 30 interim and long-term water service contracts; water quantities for these contracts total in excess of 2.1M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Pub. L. 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts.

3. Redwood Valley County WD, SRPA, California: Restructuring the repayment schedule pursuant to Pub. L. 100–516.

4. El Dorado County Water Agency, CVP, California: M&I water service contract to supplement existing water supply. Contract will provide for an amount not to exceed 15,000 acre-feet annually authorized by Public Law 101–514 (Section 206) for El Dorado County Water Agency. The supply will be subcontracted to El Dorado ID and Georgetown Divide Public Utility District.

5. Sutter Extension WD, Delano-Earlimart ID, Pixley ID, the State of California Department of Water Resources, and the State of California Department of Fish and Wildlife; CVP; California: Pursuant to Public Law 102–575, agreements with non-Federal entities for the purpose of providing funding for CVPIA refuge water conveyance and/or facilities improvement construction to deliver water for certain Federal wildlife refuges, State wildlife areas, and private wetlands.

6. CVP Service Area, California: Temporary water acquisition agreements for purchase of 5,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by Pub. L. 102–575 for terms of up to 5 years.

7. El Dorado ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the amount of up to 17,000 acre-feet annually. The contract will allow CVP facilities to be used to deliver nonproject water to the District for M&I use within its service area.

8. Horsefly, Klamath, Langell Valley, and Tulelake IDs; Klamath Project; Oregon: Repayment contracts for SOD work on Clear Lake Dam. These districts will share in repayment of costs, and each district will have a separate contract.

9. Casitas Municipal WD, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

10. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts (up to 25 years) with various entities for conveyance of nonproject water in the CVP.

11. Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California: Long-term water service contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly a long-term contract for storage of nonproject water in New Melones Reservoir.

12. Banta Carbona ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

13. Byron-Bethany ID, CVP, California: Long-term operational contract for conveyance of nonproject water and exchange of project water using Delta Division facilities of the CVP.

14. Madera-Chowchilla Water and Power Authority, CVP, California: Agreement to transfer the operation, maintenance, and replacement and certain financial and administrative activities related to the Madera Canal and associated works.

15. Sacramento Suburban WD, CVP, California: Execution of long-term Warren Act contract for conveyance of

29,000 acre-feet of nonproject water. The contract will allow CVP facilities to be used to deliver nonproject water provided from the Placer County Water Agency to the District for use within its service area.

16. Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native American Tribal Interest who may have negotiated rights under Public Law 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the Truckee River Operating Agreement.

17. Delta Lands Reclamation District No. 770, CVP, California: Long-term Warren Act contract for conveyance of up to 300,000 acre-feet of nonproject flood flows via the Friant-Kern Canal for flood control purposes.

18. Pershing County Water Conservation District, Pershing County, Lander County, and the State of Nevada; Humboldt Project; Nevada: Title transfer of lands and features of the Humboldt Project.

19. Mendota Wildlife Area, CVP, California: Reimbursement agreement between the California Department of Fish and Wildlife and Reclamation for conveyance service costs to deliver Level 2 water to the Mendota Wildlife Area during infrequent periods when the Mendota Pool is down due to unexpected but needed maintenance. This action is taken pursuant to Public Law 102–575, Title 34, Section 3406(d)(1), to meet full Level 2 water needs of the Mendota Wildlife Area.

20. Mercy Springs WD, CVP, California: Proposed partial assignment of 2,825 acre-feet of the District's CVP supply to San Luis WD for irrigation and M&I use.

21. Oro Loma WD, CVP, California: Proposed partial assignment of 4,000 acre-feet of the District's CVP supply to Westlands WD for irrigation and M&I use.

22. San Luis WD, CVP, California: Proposed partial assignment of 2,400 acre-feet of the District's CVP supply to Santa Nella County WD for M&I use.

23. Placer County Water Agency, CVP, California: Proposed exchange agreement under section 14 of the 1939 Act to exchange up to 71,000 acre-feet annually of the Agency's American River Middle Fork Project water for use by Reclamation, for a like amount of CVP water from the Sacramento River for use by the Agency.

24. Irrigation Contractors, Klamath Project, Oregon: Amendment of repayment contracts or negotiation of new contracts to allow for recovery of additional capital costs.

25. Orland Unit Water User's Association, Orland Project, California: Repayment contract for the SOD costs assigned to the irrigation of Stony Gorge Dam.

26. Goleta WD, Cachuma Project, California: An agreement to transfer title of the federally owned distribution system to the District subject to approved legislation.

27. Cawelo WD, CVP, California: Long-term Warren Act contract for conveying up to 20,000 acre-feet annually of previously banked nonproject water in the Friant-Kern Canal.

28. Colusa County WD, CVP, California: Execution of a long-term Warren Act contract for conveyance of up to 40,000 acre-feet of groundwater per year through the use of the Tehama-Colusa Canal.

29. County of Tulare, CVP, California: Proposed assignment of the County's Cross Valley Canal water supply in the amount of 5,308 acre-feet to its various subcontractors. Water will be used for both irrigation and M&I purposes.

30. City of Santa Barbara, Cachuma Project, California: Execution of a temporary contract and a long-term Warren Act contract with the City for conveyance of nonproject water in Cachuma Project facilities.

31. Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA. Added costs to rates to be collected under irrigation and interim M&I ratesetting policies.

32. Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

33. Cachuma Operation and Maintenance Board, Cachuma Project, California: Amendment to SOD Contract No. 01–WC–20–2030 to provide for increased SOD costs associated with Bradbury Dam.

34. Reclamation will become signatory to a three-party conveyance agreement with the Cross Valley Contractors and the California State Department of Water Resources for conveyance of Cross Valley Contractors' CVP water supplies that are made available pursuant to long-term water service contracts.

35. Westlands WD, CVP, California: Negotiation and execution of a long-term repayment contract to provide reimbursement of costs related to the construction of drainage facilities. This action is being undertaken to satisfy the Federal Government's obligation to provide drainage service to Westlands located within the San Luis Unit of the CVP.

36. San Luis WD, Meyers Farms Family Trust, and Reclamation, CVP, California: Revision of an existing contract between San Luis WD, Meyers Farms Family Trust, and Reclamation providing for an increase in the exchange of water from 6,316 to 10,526 acre-feet annually and an increase in the storage capacity of the bank to 60,000 acre-feet.

37. San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs, Delta Division, CVP, California: Negotiation of a 5-year wheeling agreement with an effective date in 2011 is pending. A wheeling agreement with the State of California, Department of Water Resources provides for the conveyance and delivery of CVP water through State of California facilities to the San Joaquin Valley National Cemetery.

38. Byron-Bethany ID, CVP, California: A current wheeling agreement with the State of California, Department of Water Resources and Byron-Bethany ID for the conveyance and delivery of CVP water through the California State Aqueduct to Musco Family Olive Company, a customer of Byron-Bethany.

39. Tea Pot Dome WD and Saucelito ID, CVP, California: Partial assignment of 300 acre-feet of Tea Pot Dome's current Friant Division contract class 1 water supply to Saucelito ID.

40. Lewis Creek WD and Hills Valley ID, CVP, California: Partial assignment of 250 acre-feet of Lewis Creek's current Friant Division contract class 1 water to Hills Valley ID.

41. Porterville ID and Hills Valley ID, CVP, California: Partial assignment of 1,000 acre-feet of Porterville's class 1 water to Hills Valley ID.

42. Exeter ID and Tri-Valley WD, CVP, California: Partial assignment of 400 acre-feet of Exeter's class 1 water to Tri-Valley WD.

43. Contra Costa WD, CVP, California: Amendment to an existing O&M agreement to transfer O&M of the Contra Costa Rock Slough Fish Screen to the district. Initial construction funding provided through ARRA.

44. San Luis and Delta-Mendota Water Authority, CVP, California:

Amendment to an existing O&M agreement to transfer O&M of the Delta-Mendota Canal California Aqueduct Intertie Project to the Authority. Initial construction funding provided through ARRA.

45. Irrigation water districts, individual irrigators and M&I water users, CVP, California: Temporary water service contracts for terms not to exceed 1 year for up to 100,000 acre-feet of surplus supplies of CVP water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged flood flows of short duration.

46. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, CVP, California: Temporary Warren Act contracts for terms up to 5 years providing for use of excess capacity in CVP facilities for annual quantities exceeding 10,000 acre-feet.

47. City of Redding, CVP, California: Proposed partial assignment of 30 acre-feet of the City of Redding's CVP water supply to the City of Shasta Lake for M&I use.

48. Langell Valley ID, Klamath Project; Oregon: Title transfer of lands and facilities of the Klamath Project.

49. Virginia L. Lempesis Separate Property Trust, CVP, California: Contract for the adjustment and settlement of certain claimed water rights in the Fresno Slough tributary to the San Joaquin River in fulfillment of such rights pursuant to contract No. I1r–1145 for the purchase of Miller & Lux Water Rights, dated July 27, 1939.

50. Sacramento River Division, CVP, California: Administrative assignments of various Sacramento River Settlement Contracts.

51. Conaway Preservation Group, LLC, Sacramento River Division, CVP, California: Proposed assignment of 10,000 acre-feet of water under an existing Sacramento River Settlement Contract to the Woodland-Davis Clean Water Agency.

52. California Department of Fish and Game, CVP, California: To extend the term of and amend the existing water service contract for the Department's San Joaquin Fish Hatchery to allow an increase from 35 cubic feet per second to 60 cubic feet per second of continuous flow to pass through the Hatchery prior to it returning to the San Joaquin River.

53. Orland Unit Water User's Association, Orland Project, California: Title transfer of lands and features of the Orland Project.

54. Santa Clara Valley WD, CVP, California: Second amendment to Santa Clara Valley WD's water service contract to add an additional point of delivery.

55. PacifiCorp, Klamath Project, Oregon and California: Transfer of O&M of Link River Dam and associated facilities. Contract will allow for the continued O&M by PacifiCorp.

56. Tulelake ID, Klamath Project, Oregon and California: Transfer of O&M of Station 48 and gate on Drain #1, Lost River Diversion Channel.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

1. Milton and Jean Phillips, BCP, Arizona: Colorado River water delivery contract for 60 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

2. John J. Peach, BCP, Arizona: Colorado River water delivery contracts for 456 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

3. Gila Project Works, Gila Project, Arizona: Title transfer of facilities and certain lands in the Wellton-Mohawk Division from the United States to the Wellton-Mohawk IDD.

4. Sherrill Ventures, LLLP and Green Acres Mohave, LLC; BCP; Arizona: Draft contracts for PPR No. 14 for 1,080 acre-feet of water per year as follows: Sherrill Ventures, LLLP, a draft contract for 954.3 acre-feet per year and Green Acres Mohave, LLC, a draft contract for 125.7 acre-feet per year.

5. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, California, Nevada, and Utah: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

6. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, California, Nevada, and Utah: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

7. Bureau of Land Management, LCWSP, California: Amend contract No. 8–07–30–W0375 to add a new point of diversion and place of use; San Bernardino County's Park Moabi, a Bureau of Land Management-leased site.

8. San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona: Proposed 100-year lease not to exceed 5,925 acre-feet per year of CAP water from the Tribe to Gilbert.

9. Cha Cha, LLC, BCP, Arizona: Proposed amendment to a contract exhibit to delete reference to specific irrigated acres.

10. Gila River Indian Community and Apache Junction, CAP, Arizona: Approve a CAP water lease for 1,000 acre-feet per year which will end on the 100th anniversary of the option effective date as described in the lease.

11. Arizona Recreational Facilities, LLC and Lake Havasu City, BCP, Arizona: Approve a partial assignment and transfer of 12.7 acre-feet per year of Arizona fourth priority Colorado River water from Arizona Recreational Facilities to Lake Havasu City and the related amendments.

12. ASARCO and Central Arizona Water Conservation District, CAP, Arizona: Amend ASARCO's CAP water delivery subcontract to allow for direct delivery as well as exchange.

13. City of Yuma, BCP, Arizona: Amend the City's contract to extend the term (which expired October 2012) for 5 years during which time a consolidated contract will be developed.

14. Imperial ID, BCP, California: Develop an agreement between Reclamation and Imperial ID for the funding of the design approval and construction of a facilities electrical upgrade at Imperial Dam.

15. City of Needles, LCWSP, California): Develop an agreement between Reclamation and the City of Needles for the funding of the design approval and construction of Stage II of the Project.

16. Ak-Chin Indian Community and Pascua Yaqui Tribe, CAP, Arizona: Proposed water lease for 1,000 acre-feet per year for 5 years.

17. White Mountain Apache Tribe and Various Entities, CAP, Arizona: Execute a CAP water delivery contract with White Mountain and leases with various entities for a total of up to 25,000 acre-feet annually of CAP water in accordance with the White Mountain settlement act (Title III of Pub. L. 111–291) and settlement agreement.

Completed contract actions:

1. San Carlos Apache Tribe and Town of Gilbert, CAP, Arizona: Execute amendment No. 1 to a CAP water lease to increase the 2011 water delivery from 20,000 acre-feet to 25,925 acre-feet, and extend the leasing arrangement from January 1, 2012, to December 31, 2012, for 20,000 acre-feet. Completed June 28, 2012.

2. Arizona Recreational Facilities, LLC and EPCOR Water Arizona Inc., BCP, Arizona: Approve a partial assignment and transfer of 14 acre-feet per year of Arizona fourth priority Colorado River water from Arizona Recreational Facilities to EPCOR and the related amendments. Completed November 15, 2012.

3. San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona: Execute amendment No. 2 to a CAP water lease to extend the term of the lease through 2013 for 20,000 acre-feet. Completed November 16, 2012.

4. Imperial ID, Colorado River Front Work and Levee System, California: Execute an amendatory and supplemental contract with Imperial ID for the refurbishment of certain motors and pumps at the Senator Wash Pump-Generating Facility—Supplement No. 2, to permit the purchase by Imperial ID of the diagnostic and service equipment that is needed and to delete provisions and exhibits that are not applicable. Completed September 21, 2012.

5. San Carlos Apache Tribe and Pascua Yaqui Tribe, CAP, Arizona: Execute a CAP water lease among the United States, the San Carlos Apache Tribe, and the Pascua Yaqui Tribe in order for the San Carlos Apache Tribe to lease 1,000 acre-feet of its CAP water to the Pascua Yaqui Tribe during calendar year 2013 under the terms and conditions of the lease. Completed December 19, 2012.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10, 000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. San Juan-Chama Project, New Mexico: The United States and the Town of Taos, with passage of The Taos Indian Water Rights Settlement legislation by the Congress, entered into a new contract, No. 12–WC–40–462, for an additional 366 acre-feet annually of project water. The settlement legislation provided for a third repayment contract for 40 acre-feet of project water to be delivered to the El Prado Water and Sanitation District, contract No. 12–WC–40–463. The United States is holding the remaining 369 acre-feet of project water for potential use in Indian water rights settlements in New Mexico.

3. Various Contactors, San Juan-Chama Project, New Mexico: The United States proposes to continue leasing water from various project contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow. For the purposes stated above, in September 2012, the United States purchased 154 acre-feet of water rights from Price's Dairy for $2,002,659.30.

4. Individual Irrigators, Carlsbad Project, New Mexico: The United States proposes to continue entering into forbearance contracts and lease agreements with individuals who have privately held water rights to divert nonproject water either directly from the Pecos River or from shallow/artesian wells in the Pecos River Watershed. This action will result in additional water in the Pecos River to make up for the water depletions caused by changes in operations at Sumner Dam which were made to improve conditions for a threatened species, the Pecos bluntnose shiner.

5. City of Page, Arizona, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 975 acre-feet of water for municipal purposes.

6. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

7. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

8. State of Colorado, Animas-La Plata Project, Colorado and New Mexico: Cost-sharing/repayment contract for up to 10,440 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

9. Public Service Company of New Mexico, Reclamation, and the U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program: The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M of the constructed fish passage at the Public Service Company's site pursuant to Public Law 106–392, dated October 30, 2000 (114 Stat. 1602).

10. Jensen Unit, Central Utah Project, Utah: The Uintah Water Conservancy District has requested a contract with provisions to prepay the entire 3,300 acre-feet of Project M&I water.

11. Aaron Million, Million Conservation Resource Group, Flaming Gorge Storage Unit, CRSP: Mr. Million has requested a standby contract to secure the first right to contract for up to 165,000 acre-feet annually of M&I water service from Flaming Gorge Reservoir for a proposed privately financed and constructed transbasin diversion project.

12. Albuquerque Bernalillo County Water Utility Authority and Reclamation, San Juan-Chama Project, New Mexico: Contract to store up to 50,000 acre-feet of project water in Elephant Butte Reservoir. The proposed contract would have a 40-year maximum term, which due to ongoing consultations with the U.S. Fish and Wildlife Service, the existing Contract No. 3–CS–53–01510 which expired on January 26, 2008, has been extended annually. The Act of December 29, 1981, Public Law 97–140, 95 Stat. 1717 provides authority to enter into this contract.

13. Dolores Water Conservancy District, Dolores Project, Colorado: The District has requested a water service contract for 1,402 acre-feet of newly identified project water for irrigation. The proposed water service contract will provide 417 acre-feet of project water for irrigation of the Ute Enterprise and 985 acre-feet for use by the District's full-service irrigators.

14. Elkhead Reservoir Enlargement: This contract will supersede Contract No. 05–WC–40–420. The proposed contract will include the Recovery Program's pro-rata share of the actual construction cost plus fish screen costs. Also identified in this proposed contract is the pro-rata share of the actual construction costs for the other signatory parties. Upon payment by Recovery Program, this proposed contract will ensure a permanent water supply for the endangered fish.

15. Bridger Valley Water Conservancy District, Lyman Project, Wyoming: The District has requested that their Meeks Cabin repayment contract be amended from two 25-year contacts to one 40-year contract.

16. City of Santa Fe and Reclamation, San Juan-Chama, New Mexico: Contract to store up to 50,000 acre-feet of project Water in Elephant Butte Reservoir. The proposed contract would have a 25- to 40-year maximum term, which due to ongoing consultations with the U.S. Fish and Wildlife Service, has been executed and extended on an annual basis. The Act of December 29, 1981, Public Law 97–140, 95 Stat. 1717 provides authority to enter into this contract.

17. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

18. Pine Glen, LLC, Mancos Project, Colorado: Pine Glen LLC has requested

a new carriage contract to replace existing contract No. 14–06–400–4901, assignment No. 6. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.56 cubic feet per second of nonproject water to be carried through Mancos Project facilities.

19. Voiles, Katherine Marie and William Thomas, Mancos Project, Colorado: Katherine Marie and William Thomas Voiles have requested a new carriage contract to replace existing contract No. 14–06–400–4901, assignment No. 2–A. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.38 cubic feet per second of nonproject water to be carried through Mancos Project facilities.

20. Hanson, Brian E. and Joan M. Brake-Hanson, Mancos Project, Colorado: Brian E. Hanson and Joan M. Brake-Hanson have requested a new carriage contract to replace existing contract No. 14–06–400–4901, assignment No. 5. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.12 cubic feet per second of nonproject water to be carried through Mancos Project facilities.

21. Animas-La Plata Project, Colorado-New Mexico: Navajo Nation title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land outside the corporate boundaries of the City of Farmington, New Mexico; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11); City of Farmington, New Mexico, title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land inside the corporate boundaries of the City of Farmington; New Mexico, contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11); and an Operations Agreement between the Navajo Nation and the City of Farmington, New Mexico, consistent with Sec 10605 of the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11).

22. Orchard Mesa Canal Automation Project, Orchard Mesa Division, Grand Valley Project, Colorado: Orchard Mesa ID has requested improvements to its delivery system. The major components of the current configuration of the improvements include a buffer reservoir, Supervisory Control and Data Acquisition system, pumping station, replacing the unlined portion of the Mutual Mesa Lateral with a pipeline and installing a booster pump, and enhancements to Canal Nos. 1 and 2. Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, particularly the Endangered Species Act 16 U.S.C. 1531, Section 2; Act of October 30, 2000 (Pub. L. 106–392).

23. El Paso County Water Improvement District No. 1 and Ysleta del Sur Pueblo, Rio Grande Project, Texas: Contract to convert up to 1,000 acre-feet of the Pueblo's project irrigation water to use for tradition and religious purposes.

24. Uintah Water Conservancy District, Vernal Unit, CUP, Utah: Proposed carriage contract to both store up to 35,000 acre-feet of nonproject water in Steinaker Reservoir and carry nonproject water in the Steinaker Service and Feeder Canals.

25. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Proposed carriage contract to both store up to 5,000 acre-feet of nonproject water in Red Fleet Reservoir and carry nonproject water in the project Canals.

26. Emery County Project, Utah: PacifiCorp Energy Corporation has requested renewal of its water service contract for 6,000 acre-feet of project M&I water from Joe's Valley Reservoir, Emery County Project.

27. Weber Basin Project, Utah: The North Summit Pressurized Irrigation Company has requested a carriage contract for up to 7,000 acre-feet of nonproject water through Wanship Dam and outlet works, Weber Basin Project.

28. Blue Cut Mitigation Project and Emery County Project, Utah: Reclamation has proposed an exchange under which it would provide an augmentation to flows in the San Rafael River to the Fish and Wildlife Service in exchange for the Fish and Wildlife Service transferring water right No. 93–2241 to Reclamation, Emery County Project.

29. Jensen Unit, CUP, Utah: Temporary water service contract with the Uintah Water Conservancy District for use of the 3,300 acre-feet of Jensen Unit M&I water during drought years.

Completed contract action:

1. Navajo-Gallup Water Supply Project, New Mexico: Repayment contract with the Jicarilla Apache Nation for up to 1,200 acre-feet per year of M&I water. Contract terms to be consistent with the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11). Completed April 12, 2012.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone 406–247–7752.

1. Irrigation, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year, or up to 1,000 acre-feet of water annually for a term of up to 40 years.

2. Water user entities responsible for payment of O&M costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Pub. L. 111–11.

3. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contracts for the sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

4. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Water sales from the regulatory capacity of Ruedi Reservoir. Water service and repayment contracts for the remainder of the marketable yield for irrigation and M&I use.

5. Garrison Diversion Conservancy District, Garrison Diversion Unit, P–SMBP, North Dakota: Intent to modify long-term water service contract to add additional irrigated acres.

6. Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contracting in the Fryingpan-Arkansas Project.

7. Colorado-Big Thompson Project, Colorado: Consideration of excess capacity contracting in the Colorado-Big Thompson Project.

8. Municipal Subdistrict of the Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Consideration of a new long-term contract or amendment of contract No. 4–07–70–W0107 with the Municipal Subdistrict and the Northern Colorado Water Conservancy District for the proposed Windy Gap Firming Project.

9. Northern Integrated Supply Project, Colorado-Big Thompson Project, Colorado: Consideration of a new long-term contract with approximately 15 regional water suppliers and the Northern Colorado Water Conservancy

District for the Northern Integrated Supply Project.

10. Exxon Mobil Corporation, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of Exxon Mobil Corporation's request to amend its Ruedi Round I contract to include additional uses for the water.

11. Colorado River Water Conservation District, Colorado-Big Thompson Project, Colorado: Long-term exchange, conveyance, and storage contract to implement the Exhibit B Agreement of the Settlement Agreement on Operating Procedures for Green Mountain Reservoir Concerning Operating Limitations and in Resolution of the Petition Filed August 7, 2003, in Case No. 49–CV–2782 (The United States v. Northern Colorado Water Conservancy District, et al., U.S. District Court for the District of Colorado, Case No. 2782 and Consolidated Case Nos. 5016 and 5017).

12. Glendo Unit, P–SMBP, Wyoming: Intent to enter into a long-term excess capacity contract with Pacificorp.

13. Roger W. Evans (Individual), Boysen Unit, P–SMBP, Wyoming: Renewal of long-term water service contract.

14. Big Horn Canal ID, Boysen Unit, P–SMBP, Wyoming: Renewal of the District's long-term water service contract.

15. Hanover ID, Boysen Unit, P–SMBP, Wyoming: Renewal of the District's long-term water service contract.

16. Busk-Ivanhoe, Inc., Fryingpan-Arkansas project, Colorado: Contract for long-term carriage and storage, and/or a new contract for an additional use of water.

17. State of Colorado, Department of Corrections, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term excess capacity storage contract in Pueblo Reservoir.

18. Southeastern Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration of an excess capacity master storage contract.

19. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity for municipal-recreational purposes to the 15-Mile Reach.

20. Municipal Recreation Contract out of Granby Reservoir, Colorado-Big Thompson Project, Colorado: Supplement to contract No. 9–07–70–W0020 to allow Northern Colorado Water Conservancy District to contract for delivery of 5,412.5 acre-feet of water annually out of Lake Granby to the 15-Mile Reach.

21. State of Kansas Department of Wildlife and Parks, Glen Elder Unit, P–SMBP, Kansas: Intent to enter into a contract for the remaining conservation storage in Waconda Lake for recreation and fish and wildlife purposes.

22. Arkansas Valley Conduit, Fryingpan-Arkansas Project, Colorado: Consideration of a repayment contract for the Arkansas Valley Conduit.

23. Scotty Phillip Cemetery, Mni-Wiconi Project, South Dakota: Consideration of a new long-term M&I water service contract.

24. Northern Colorado Water Conservancy District, Colorado Big Thompson Project, Colorado: Amend or supplement the repayment contract to include the Carter Lake Dam Additional Outlet Works and Flatiron Power Plant Bypass facilities.

25. Miscellaneous water users in North Dakota and South Dakota: Intent to develop short- or long-term water service contracts for minor amounts of water to serve domestic needs at Reclamation reservoirs.

26. Jamestown Reservoir, Jamestown Unit, P–SMBP, North Dakota: Intent to enter into an individual long-term irrigation water service contract to provide up to 285 acre-feet of water annually for a term of up to 40 years from Jamestown Reservoir, North Dakota.

27. Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration of amendatory contract to address a change in timing of their repayment obligation.

28. Donala Water and Sanitation District, Fryingpan-Arkansas Project, Colorado: Consideration of a long-term excess capacity contract.

29. Republican River Basin, P–SMBP, Kansas/Nebraska: Consideration of short-term contract(s) for use of Reclamation facilities during non-irrigation season.

30. Purgatoire Water Conservancy District, Trinidad Project, Colorado: Consideration of an amendment to the contract to ensure repayment of costs within the 70-year repayment period, and consideration of an amendment to change the operating principles of the contract.

31. Soldier Canyon Filter Plant, City of Fort Collins, City of Greeley, and Northern Colorado Water Conservancy District; Colorado-Big Thompson Project; Colorado: Consideration of temporary excess capacity contract(s) in Horsetooth Reservoir.

32. F. Clarke Jackman Jr., Boysen Unit, P–SMBP, Wyoming: Renewal of a long-term water service contract.

33. Gregory and Margaret Lungren, Boysen Unit, P–SMBP, Wyoming: Renewal of a long-term water service contract.

34. Grey Reef Ranch, LLC, Kendrick Project, Wyoming: Renewal of a long-term Warren Act contract.

35. Doug and Michelle Hamilton, Boysen Unit, P–SMBP, Wyoming: Renewal of a long-term water service contract.

36. Frank Robbins, Boysen Unit, P–SMBP, Wyoming: Renewal of a long-term water service contract.

37. Wade W. Jacobsen, Boysen Unit, P–SMBP, Wyoming: Renewal of a long-term water service contract.

38. Yellowtail Unit, P–SMBP, Montana: Negotiation of a water allocation agreement with the Crow Tribe for 300,000 acre-feet of storage in Bighorn Lake pursuant to the Crow Tribe Water Rights Settlement Act of 2010 (Pub. L. 111–291, enacted December 8, 2010).

39. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Dakota Water Resources Act of 2000; negotiation of water service or repayment contracts with irrigators and M&I users.

40. Oil and Gas Industry Contractors; P–SMBP; North Dakota, South Dakota, Montana and Wyoming: Consideration of a form of contract for water service from P–SMBP reservoirs for industrial purposes.

41. East Bench ID, East Bench Unit, Three Forks Division, P–SMBP, Montana: Consideration of a contract amendment, pursuant to Pub. L. 112–139, to extend the term of contract No. 14–06–600–3593 through December 31, 2013.

42. Western Heart ID, Lower Heart Irrigation Company, and Individual Irrigators; Heart Butte Unit; P–SMBP; North Dakota: Consideration of a new or amended long-term irrigation water service or repayment contract and new or amended project-use power contract.

43. State of Colorado, Armel Unit, P–SMBP, Colorado: Consideration of a contract amendment to address future OM&R costs.

44. Central Oklahoma Master Conservancy District, Norman Project, Oklahoma: Amend existing contract No. 14–06–500–590 to allow for importation and storage of nonproject water in accordance with the Lake Thunderbird Efficient Use Act of 2012.

45. Helena Valley ID; Valley Unit, P–SMBP; Montana: Proposed contract amendment to allow the sale and delivery of excess water for miscellaneous purposes.

46. Northern Colorado Water Conservancy District, Colorado Big Thompson Project, Colorado: Consideration of an amendment to describe the District's commitment to evaluate and address factors that are contributing to reduced clarity in Grand Lake.

Completed contract actions:

1. Colorado River Water Conservation District, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term contract to provide 7,412.5 acre-feet of water annually to supplement flows for fish in the 15-Mile Reach of the Colorado River near Grand Junction. Completed December 26, 2012.

2. Glendo Unit, P–SMBP, Wyoming: Intent to enter into a long-term contract with the Wyoming Water Development Office for the uncontracted portion of Glendo Reservoir storage water allocated to the State of Wyoming. Completed October 19, 2012.

3. Herrin Ranch, Boysen Unit, P–SMBP, Wyoming: Intent to enter into a long-term renewal contract. Completed September 14, 2012.

Dated: February 14, 2013.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2013–08618 Filed 4–11–13; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–825]

Certain Silicon Microphone Packages and Products Containing the Same; Commission Determination Not To Review an Initial Determination Terminating Investigation Based on a Settlement Agreement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 21) of the presiding administrative law judge (''ALJ'') terminating the investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on January 13, 2012, based on a complaint filed by Knowles Electronics LLC of Itasca, Illinois (''Knowles''). The complaint, as supplemented, alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 7,439,616 and 8,018,049, 77 FR 2087 (Jan. 13, 2012). The respondents are Analog Devices Inc. of Norwood, Massachusetts (''ADI''); Amkor Technology, Inc. of Chandler, Arizona; and Avnet, Inc. of Phoenix, Arizona (collectively, ''Respondents''). *Id.* Subsequently, some of the claims in both of the asserted patents were terminated from the investigation.

On March 12, 2013, complainant Knowles and Respondents filed a joint motion to terminate this investigation based on a settlement agreement between Knowles and ADI. On the same day, the ALJ issued an ID (Order No. 21) granting the motion. The ALJ found that termination of the investigation based on settlement did not impose any undue burdens on the public health and welfare, competitive conditions in the United States economy or United States consumers. No party petitioned for review of the ID, and the Commission has determined not to review it. The investigation has been terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

Issued: April 8, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–08566 Filed 4–11–13; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of Open Meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATE: June 3–4, 2013

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle NE., Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Rules Committee Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: April 8, 2013.

Jonathan C. Rose,

Rules Committee Secretary.

[FR Doc. 2013–08535 Filed 4–11–13; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health (MACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of reestablishment of the MACOSH charter.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., App. 2), and after consultation with the General Services Administration, the Secretary of Labor is reestablishing the charter for the Maritime Advisory Committee for Occupational Safety and Health. The Committee will better enable OSHA to perform its duties under the Occupational Safety and Health Act (the OSH Act) of 1970 (29 U.S.C. 655, 656). Authority to establish this Committee is at Sections 6(b)(1) and 7(b) of the OSH Act, Section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order

1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR Part 1912. The Committee is diverse and balanced, both in terms of segments of the maritime industry represented (e.g., shipyard employment, longshoring, and marine terminal industries), and in the views and interests represented by the members.

FOR FURTHER INFORMATION CONTACT: Amy Wangdahl, Director, Office of Maritime and Agriculture, Directorate of Standards and Guidance, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2086.

SUPPLEMENTARY INFORMATION: The Committee will advise OSHA on matters relevant to the safety and health of employees in the maritime industry. This includes advice on maritime issues that will result in more effective enforcement, training, and outreach programs, and streamlined regulatory efforts. The maritime industry includes shipyard employment, longshoring, marine terminal and other related industries, e.g., commercial fishing and shipbreaking. The Committee will function solely as an advisory body in compliance with the provisions of FACA and OSHA's regulations covering advisory committees (29 CFR Part 1912).

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice pursuant to Sections 6(b)(1), and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)(1), 656(b)), the Federal Advisory Committee Act (5 U.S.C. App. 2), Section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR Part 1912.

Signed at Washington, DC, on April 9, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–08654 Filed 4–11–13; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Institutional Advancement Committee will meet telephonically on April 23, 2013. The meeting will commence at 4:00 p.m., Eastern Daylight Time (EDT), and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

STATUS OF MEETING: Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to discuss prospective funders for LSC's development activities and 40th anniversary celebration and prospective members for an honorary auxiliary group.

A verbatim written transcript will be made of each closed session meeting of the Institutional Advancement Committee. The transcript of any portion of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (9) will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closings are authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open

1. Approval of agenda.
2. Discussion of fundraising objectives.
3. Discussion of fundraising policies.
4. Public comment.
5. Consider and act on other business.

Closed

6. Discussion of prospective funders for LSC's development activities and 40th anniversary celebration.
7. Discussion of prospective members for an honorary auxiliary group.
8. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: April 9, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–08803 Filed 4–10–13; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506 as follows (ending times are approximate):

Literature (application review): In Room 716. This meeting will be closed.

DATES: May 22–23, 2013; 9:00 a.m. to 6:30 p.m. EDT on May 22nd and 9:00 a.m. to 5:00 p.m. EDT on May 23rd.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: April 9, 2013.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2013–08634 Filed 4–11–13; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Advisory Committee on International Exhibitions Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that one meeting of the Federal Advisory Committee on International Exhibitions (FACIE) will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506 as follows (ending times are approximate):

FACIE (application review): In Room 714. This meeting will be closed.

DATES: May 17, 2013; 9:00 a.m. to 1:00 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: April 9, 2013.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2013–08633 Filed 4–11–13; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF management officials having responsibility for the Advisory Committee for International Science and Engineering, #25104 have determined that renewing this committee for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Effective date for renewal is April 15, 2013. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: April 8, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–08522 Filed 4–11–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119).

Date/Time:

May 6, 2013; 8:30 a.m. to 5:45 p.m.,
May 7, 2013; 8:30 a.m. to 12:30 p.m.

Place: NSF Headquarters, Stafford II, Room 595, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Amanda Edelman, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8600, *aedelman@nsf.gov.*

To help facilitate your entry into the building, please contact the individual listed above. Your request to attend this meeting should be received on or prior to May 2, 2013.

Purpose of Meeting: To provide advice with respect to the Foundation's science, technology, engineering, and mathematics (STEM) education and human resources programming.

Agenda

May 6, 2013 (Monday Morning)

- Remarks by the Committee Chair and NSF Assistant Director for Education and Human Resources (EHR)
- Subcommittee Updates and Discussion on:
  - Broadening Participation and Institutional Capacity Building
  - STEM Learning and Learning Environments
  - STEM Workforce Development

Lunch

May 6, 2013 (Monday Afternoon)

- Subcommittee Working Sessions
- Committee Visit with NSF Acting Director Cora Marrett
- Review and Acceptance of Committee of Visitor Reports
  - Science, Technology, Engineering, and Mathematics Talent Expansion Program
  - Transforming Undergraduate Education in Science, Technology, Engineering and Mathematics/Course Curriculum Laboratory Improvement Program

May 7, 2013 (Tuesday Morning)

- Subcommittee Working Sessions
- Subcommittee Report Outs and Next Steps

Adjournment

Dated: April 8, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–08521 Filed 4–11–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Early Career Doctorates Survey; Extension of Public Comment Period

AGENCY: National Science Foundation.

ACTION: Notification of Extension of Public Comment Period.

SUMMARY: The National Science Foundation published a notice on April 9, 2013, at 78 FR 21162, seeking comments on establishing the Early Career Doctorates Survey. The original comment date was to end on May 9, 2013.

DATES: Comments on this notice will now be accepted until June 10, 2012.

ADDRESSES: Please send comments to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Dated: April 9, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–08619 Filed 4–11–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0068]

Aging Management of Internal Surfaces, Service Level III and Other Coatings, Atmospheric Storage Tanks, and Corrosion Under Insulation

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft license renewal interim staff guidance; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) requests public comment on the Draft License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2012–02, ''Aging Management of Internal Surfaces, Service Level III and Other Coatings, Atmospheric Storage Tanks, and Corrosion under Insulation.'' The draft LR–ISG proposes to revise NRC staff-recommended aging management programs (AMP) and aging management review (AMR) items in NUREG–1801, Revision 2, ''Generic Aging Lessons Learned (GALL) Report,'' and the NRC staff's AMR procedure, acceptance criteria, and AMR items contained in NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR) to address new recommendations related to internal surface aging effects of components, and atmospheric storage tanks within the scope of the Requirements for Renewal of Operating Licenses for Nuclear Power Plants. The ISG also includes new recommendations to address Service Level III and Other coatings and corrosion under insulation.

DATES: Submit comments by June 16, 2013. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly-available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0068. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0068. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. William Holston, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8573; email: *William.Holston@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0068 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly-available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0068.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft LR–ISG–2012–02 is available electronically under ADAMS Accession No. ML12291A920. The GALL Report and SRP–LR are available under ADAMS Accession Nos. ML103490041 and ML103490036, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Interim Staff Guidance Web site:* The LR–ISG documents are also available online under the ''License Renewal'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int.*

B. Submitting Comments

Please include Docket ID NRC–2013–0068 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The NRC issues LR–ISGs to communicate insights and lessons learned and to address emergent issues not covered in license renewal guidance documents, such as the GALL Report and SRP–LR. In this way, the NRC staff and stakeholders may use the guidance in an LR–ISG document before it is incorporated into a formal license renewal guidance document revision. The NRC staff issues LR–ISGs in accordance with the LR–ISG Process, Revision 2 (ADAMS Accession No. ML100920158), for which a notice of availability was published in the **Federal Register** on June 22, 2010 (75 FR 35510).

The NRC staff has developed draft LR–ISG–2012–02 to address: (a) Recurring internal corrosion, (b) a representative minimum sample size for periodic inspections in GALL Aging Management Program (AMP) XI.M38, ''Inspection of Internal Surfaces in Miscellaneous Piping and Ducting Components,'' (c) loss of coating integrity for Service Level III and Other coatings, (d) flow blockage of water-based fire protection system piping, (e) revisions to the scope and inspection

recommendations of GALL AMP XI.M29, ''Aboveground Metallic Tanks,'' (f) corrosion under insulation, (g) external volumetric examination of internal piping surfaces of underground piping, (h) specific guidance for use of the pressurization option for inspecting elastomers in GALL AMP XI.M38, and (i) key miscellaneous changes to the GALL Report

III. Proposed Action

By this action, the NRC is requesting public comments on draft LR–ISG–2012–02. This LR–ISG proposes certain revisions to NRC guidance on implementation of the requirements in 10 CFR Part 54. The NRC staff will make a final determination regarding issuance of the LR–ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 4th day of April, 2013.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–08699 Filed 4–11–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a fixed income roundtable discussion on Tuesday, April 16, 2013, in the Multipurpose, Room L–006. The meeting will begin at 8:30 a.m. and will be open to the public, with seating on a first-come, first-served basis. Doors will open at 8:00 a.m. Visitors will be subject to security checks. The roundtable will be webcast on the Commission's Web site at www.sec.gov and will be archived for later viewing.

On April 2, 2013, the Commission published notice of the roundtable discussion (Release No. 34–69275), indicating that the event is open to the public and inviting the public to submit written comments to the Commission. This Sunshine Act notice is being issued because a majority of the Commission may attend the roundtable discussion.

The agenda for roundtable includes opening remarks followed by four panel discussions. The participants in the first panel will discuss the characteristics of the municipal securities market today, and how that market has evolved in recent years. The participants in the second panel will focus on the characteristics of the corporate bond and asset-backed securities markets today, how those markets have evolved in recent years, and how they compare to the municipal securities market. The participants in the third panel will discuss whether there are any steps that might be taken to improve the transparency, liquidity, efficiency, or other aspects of the structure of the municipal securities market. The participants in the fourth panel will discuss whether there are any steps that might be taken to improve the transparency, liquidity, efficiency, or other aspects of the structure of the corporate bond and asset-backed securities markets.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: April 9, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–08746 Filed 4–10–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69338; File No. SR–CBOE–2013–019]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to Market-Maker Continuous Quoting Obligations

April 8, 2013.

I. Introduction

On February 4, 2013, Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE's rules relating to Market-Maker [3] continuous quoting obligations. The proposed rule change was published for comment in the **Federal Register** on February 22, 2013.[4] The Commission did not receive any comment letters regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend its rules to exclude intra-day add-on series (''Intra-day Adds'') from Market-Makers' continuous quoting obligations on the day during which such series are added for trading.[5] In addition, the Exchange proposes to permit Preferred Market-Makers (''PMMs''),[6] Lead Market-Makers (''LMMs''),[7] DPMs,[8] and Electronic DPMs (''e–DPMs'') [9] (Market-Makers, PMMs, LMMs, DPMs, and e–DPMs are collectively referred to as ''Market-Makers'' unless the context provides otherwise) to receive participation entitlements in all Intra-day Adds on the day during which such series are added for trading provided that the Market-Maker meets all other requirements to receive a participation entitlement set forth in the applicable rules.[10]

III. Discussion and Commission's Findings

After careful review, 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.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CBOE Rule 8.1 defines ''Market-Maker'' as ''an individual Trading Permit Holder [(''TPH'')] or a TPH organization that is registered with the Exchange for the purpose of making transactions as dealer-specialist on the Exchange.''

[4] *See* Securities Exchange Act Release No. 68944 (February 15, 2013), 78 FR 12377 (''Notice'').

[5] *See id.* at 12377. According to the Exchange, Intra-day Adds are series that are added to the Exchange system after the opening of the Exchange, rather than prior to the beginning of trading. *See id.*

[6] CBOE Rule 8.13 defines ''Preferred Market Maker'' as a Market-Maker designated by a TPH to receive that TPH's orders in a specific class.

[7] CBOE Rule 8.15A defines ''Lead Market-Maker'' as a Market-Maker in good standing appointed by the Exchange in an option class for which a Designated Primary Market-Maker (''DPM'') has not been appointed.

[8] CBOE Rule 8.80 defines ''Designated Primary Market-Maker'' as a ''TPH organization that is approved by the Exchange to function in allocated securities as a Market-Maker (as defined in Rule 8.1) and is subject to the obligations under Rule 8.85.''

[9] CBOE Rule 8.92 defines ''Electronic DPM'' as ''a TPH organization that is approved by the Exchange to remotely function in allocated option classes as a DPM and to fulfill certain obligations required of DPMs except for Floor Broker and Order Book Official obligations.''

[10] *See* Notice, *supra* note 4, 78 FR at 12377.

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

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.

According to CBOE, several Market-Makers have communicated to the Exchange that their trading systems do not automatically produce continuous quotes in Intra-day Adds on the trading day during which those series are added and that the only way they could quote in these series on the trading day during which they were added would be to shut down and restart their systems.[13] Further, the Exchange states that Market-Makers have indicated that the work that would be required to modify their systems to permit quoting in Intra-day Adds would be significant and costly.[14] In addition, the Exchange indicates that Intra-day Adds represent only approximately 0.0046% of the average number of series listed on the Exchange each trading day, and that Market-Makers will still be obligated to provide continuous two-sided markets in a substantial number of series in their appointed classes.[15]

In addition, the Exchange intends to implement changes to continuous quoting obligations. The Exchange represents that given the pending heightened quoting obligations and the considerable costs that would otherwise be involved for Market-Makers to adjust their systems to quote Intra-day Adds on the trading day during which they are listed, several PMMs have informed the Exchange that they intend to withdraw from the PMM program, while other Market-Makers have requested that the Exchange suspend their pending applications to join the PMM program.

The Exchange believes that it would be impracticable, particularly given that a number of Market-Makers use their systems to quote on multiple markets and not solely on the Exchange, for Market-Makers to turn off their entire systems to accommodate quoting in Intra-day Adds on the day during which those series are added on the Exchange. In addition, the Exchange believes this would interfere with the continuity of its market and reduce liquidity, which would ultimately harm investors and contradicts the purpose of the Market-Maker continuous quoting obligations.

The Exchange does not believe that the proposed rule change would adversely affect the quality of the Exchange's markets or lead to a material decrease in liquidity. Rather, the Exchange believes that its current market structure, with its high rate of participation by Market-Makers, permits the proposed rule change without fear of losing liquidity. The Exchange also believes that market-making activity and liquidity could materially decrease without the proposed rule change to exclude Intra-day Adds from Market-Maker continuous quoting obligations on the trading day during which they are added for trading.

The Exchange believes that this proposed relief will encourage Market-Makers to continue appointments and other TPHs to request Market-Maker appointments, and, as a result, expand liquidity in options classes listed on the Exchange to the benefit of the Exchange and its TPHs and public customers. The Exchange believes that its Market-Makers would be disadvantaged without this proposed relief, and other TPHs and public customers would also be disadvantaged if Market-Makers withdrew from appointments in options classes, resulting in reduced liquidity and volume in these classes.

In addition, the Exchange believes that the proposed rule change to clarify that Market-Makers may receive participation entitlements in Intraday Adds on the day during which such series are added for trading if it satisfies the other entitlement requirements as set forth in Exchange rules, even if the rules do not require the Market-Makers to continuously quote in those series, will incentivize Market-Makers to quote in series in which they are not required to quote, which may increase liquidity in their appointed classes.

The Exchange's proposal to exclude Intra-day Adds from Market-Makers' continuous electronic quoting obligations on the day during which such series are added for trading would not affect Market-Makers' other obligations. For example, Market-Makers will still be required to engage in activities that constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market,[16] including (1) to compete with other Market-Makers to improve markets in all series of options classes comprising their appointments; (2) to make markets that, absent changed market conditions, will be honored in accordance with firm quote rules; and (3) to update market quotations in response to changed market conditions in their appointed options classes and to assure that any market quote it causes to be disseminated is accurate.[17] In addition, the proposed rule change would not excuse a Market-Maker from its obligation to submit a single quote or to maintain continuous quotes in one or more series of a class to which the Market-Maker is appointed when called upon by an Exchange official if, in the judgment of such official, it is necessary to do so in the interest of maintaining a fair and orderly market.[18]

The Commission notes that the Exchange believes that Market-Makers would be required to shut down and restart their systems, or make costly systems changes, in order to quote in Intra-day Adds. A requirement for Market-Makers to maintain continuous electronic quotes in Intra-day Adds, which represents a minor part of Market-Makers' overall obligations, may not justify the system resources, or the disruption to trading, the Exchange states would be necessary to accommodate quoting in Intra-day Adds. Accordingly, the Commission believes that the Exchange's proposal concerning Intra-day Adds would 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.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–2013–019) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08603 Filed 4–11–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69343; File No. SR–BX–2013–026]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To Adopt Chapter V, Section 3 Subparagraph (d)(iv) Regarding Obvious Error or Catastrophic Error Review

April 8, 2013.

I. Introduction

On March 14, 2013, NASDAQ OMX BX, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section

[13] *See* Notice, *supra* note 4, 78 FR at 12378.

[14] *See id.*

[15] *See id.* at 12379.

[16] *See* CBOE Rule 8.7(a).

[17] *See* CBOE Rule 8.7(b).

[18] *See* CBOE Rule 8.7(d)(iv).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for how the Exchange proposes to treat obvious and catastrophic options errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan''). The proposed rule change was published for comment in the **Federal Register** on March 20, 2013.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

Since May 6, 2010, when the financial markets experienced a severe disruption, the equities exchanges and the Financial Industry Regulatory Authority have developed market-wide measures to help prevent a recurrence. In particular, on May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[5] The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands, creating a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks.[6]

In connection with the implementation of the Plan, the Exchange proposes to adopt new Chapter V, Section 3(d)(iv) to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Chapter V, Sections 6(b) or 6(f), for a one year pilot basis from the date of adoption of the proposed rule change.[7] The Exchange proposes to retain the ability to review trades that occur during a Limit State or Straddle State by Exchange motion pursuant to Chapter V, Section 6(d)(i).

Under Sections 6(b)(i) and (f)(i), obvious and catastrophic errors are calculated by determining a theoretical price and applying such price to ascertain whether the trade should be nullified or adjusted. Obvious and catastrophic errors are determined by comparing the theoretical price of the option, calculated by one of the methods in Section 6(c), to an adjustment table in Section 6(b)(i) for obvious errors or Section 6(f)(i) for catastrophic errors. Generally, the theoretical price of an option is the National Best Bid and Offer (''NBBO'') of the option. In certain circumstances, Exchange officials have the discretion to determine the theoretical price.[8]

The Exchange believes that neither of these methods is appropriate during a Limit State or Straddle State. Under Section 6(c)(i), the theoretical price is determined with respect to the NBBO for an option series just prior to the trade. According to the Exchange, during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical price should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. Because the approach under Section 6(c)(i) by definition depends on a reliable NBBO, the Exchange does not believe that approach is appropriate during a Limit State or Straddle State. Additionally, because the Exchange system will only trade through the theoretical bid or offer if the Exchange or the participant (via an ISO order) has accessed all better priced interest away in accordance with the Options Order Protection and Locked/Crossed Markets Plan, the Exchange believes potential trade reviews of executions that occurred at the participant's limit price and also in compliance with the aforementioned Plan could harm liquidity and also create an advantage to either side of an execution depending on the future movement of the underlying stock.

With respect to Section 6(c)(ii), affording discretion to Exchange staff to determine the theoretical price and thereby, ultimately, whether a trade is busted or adjusted and to what price, the Exchange notes that it would be difficult to exercise such discretion in periods of extraordinary market volatility and, in particular, when the price of the underlying security is unreliable. The Exchange again notes that the theoretical price in this context would be subjective. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting fair and orderly markets. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying these provisions during such unusual market conditions.

Additionally, the Exchange proposes to provide that trades would not be subject to review under Section 6(b)(ii) during a Limit or Straddle State. Under Section 6(b)(ii), a trade may be nullified or adjusted where an execution occurred in a series quoted no bid. The Exchange believes that these situations are not appropriate for an error review because they are more likely to result in a windfall to one party at the expense of another in a Limit State or Straddle State, because the criteria for meeting the no-bid provision are more likely to be met in a Limit State or Straddle State, and unlike normal circumstances, may not be a true reflection of the value of the series being quoted.

In response to these concerns, the Exchange proposes to adopt Section 3(d)(iv) to provide that trades are not subject to an obvious error or catastrophic error review pursuant to Section 6(b) and 6(f) during a Limit State or Straddle State. In addition, proposed Section 3(d)(iv) also will include a qualification that nothing in proposed Section 3(d)(iv) will prevent electronic trades from being reviewed on Exchange motion pursuant to Section 6(d)(i). According to the Exchange, this safeguard will provide the flexibility to act when necessary and appropriate, while also providing market participants with certainty that trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review on Exchange motion electronic transactions that occur during a Limit State or Straddle State under this provision, according to the Exchange, would enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69140 (March 15, 2013), 78 FR 17255 (''Notice'').

[4] *See* Letter to Heather Seidel, Associate Director, Division of Trading and Markets, Commission, from Thomas A. Wittman, Senior Vice President, BX, dated April 5, 2013 (''BX Letter'').

[5] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498.

[6] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[7] The Exchange stated that various members of the Exchange staff have spoken to a number of member organizations about obvious and catastrophic errors during a Limit State or Straddle State and that a variety of viewpoints emerged, mostly focused on having many trades stand, on fairness and fair and orderly markets, and on being able to re-address the details during the course of the pilot, if needed.

[8] Specifically, under Section 6(c), the theoretical price is determined in one of two ways: (i) If the series is traded on at least one other options exchange, the last National Best Bid price with respect to an erroneous sell transaction and the last National Best Offer price with respect to an erroneous buy transaction, just prior to the transaction; or (ii) as determined by MarketWatch as defined in Chapter I, if there are no quotes for comparison purposes.

which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors.

III. Discussion

The Commission finds that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In the filing, the Exchange notes its belief that suspending certain aspects of Chapter V, Section 6 during a Limit State or Straddle State will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange during Limit States and Straddle States, thus promoting fair and orderly markets.

The Exchange, however, has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. The Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Section 6(b) or 6(f). The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states that by rejecting market orders and stop orders, and cancelling pending market orders and stop orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Additionally, the Exchange notes the existence of SEC Rule 15c3–5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Finally, with respect to limit orders that will be executable during Limit States and Straddle States, the Exchange states that it applies price checks to limit orders that are priced sufficiently far through the NBBO. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

The Exchange also believes that the aspect of the proposed rule change that will continue to allow the Exchange to review on its own motion electronic trades that occur during a Limit State or a Straddle State is consistent with the Act because it would provide flexibility for the Exchange to act when necessary and appropriate to nullify or adjust a transaction and will enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. The Exchange represents that it recognizes that this provision is limited and that it will administer the provision in a manner that is consistent with the principles of the Act. In addition, the Exchange represents that it will create and maintain records relating to the use of the authority to act on its own motion during a Limit State or Straddle State.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 5, 2013, the Exchange submitted a letter stating that it would provide specific data to

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.[11] This will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

Finally, the Commission notes that the Plan, to which these rules relate, will be implemented on April 8, 2013. Accordingly, for the reasons stated above, and in consideration of the April 8, 2013 implementation date of the Plan, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the Exchange's proposal prior to the 30th day after the publication of the notice in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BX–2013–026), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

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[11] In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Section 3(d)(iv), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) The options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. *See* BX Letter, *supra* note 4.

[12] 15 U.S.C. 78s(b)(2). The Commission noticed substantially similar rules proposed by NYSE MKT LLC and NYSE Arca, Inc. with a full 21 day comment period. *See* Securities Exchange Act Release No. 69033, 78 FR 15067 (March 8, 2013) and Securities Exchange Act Release No. 69032, 78 FR 15080 (March 8, 2013).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69345; File No. SR–C2–2013–013]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to the Regulation NMS Plan To Address Extraordinary Market Volatility

April 8, 2013.

I. Introduction

On March 7, 2013, C2 Options Exchange, Incorporated (''C2'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its rules to address certain option order types, order handling procedures, obvious error and market-maker quoting obligations on the Exchange after the implementation of the National Market System Plan to Address Extraordinary Market Volatility (''Limit up-Limit Down Plan''). The proposed rule change was published for comment in the **Federal Register** on March 14, 2013.[3] On March 26, 2013, C2 filed Amendment No. 1 to the proposed rule change.[4] In Amendment No. 1, the Exchange, among other things, proposed to add rule text to give the Exchange authority to review transactions in certain limited circumstances.[5] On April 4, C2 filed Amendment No. 2 to the proposed rule change.[6] The Commission received one comment letter on the proposed rule change.[7] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.[8] This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.[9] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69083 (March 8, 2013), 78 FR 16320 (''Notice'').

[4] *See* Amendment No. 1 dated March 26, 2013 (''Amendment No. 1'').

[5] *Id.* Additionally, the Exchange provided rationale for terminating the HAL auction early and cancelling of the market orders, discussed *infra.*

[6] *See* Amendment No. 2 dated April 4, 2013 (''Amendment No. 2''). Amendment No. 2 expanded upon the Exchange's rationale for its proposal to accept certain types of market orders during a limit up-limit down state, its proposal to cancel and replace limit orders with market orders during a limit up-limit down state, and its proposed treatment of stock-option orders in a limit up-limit down state. Because Amendment No. 2 is technical in nature, it is not subject to notice and comment.

[7] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Angelo Evangelou, Associate General Counsel, C2, dated April 4, 2013 (''C2 Letter'').

[8] The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission. *See* Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf.*

[9] For further discussion on the development of the single-stock circuit breaker pilot program, *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (''Limit Up-Limit Down Plan'' or ''Plan'').

single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.[10]

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan [11] pursuant to Section 11A of the Act,[12] and Rule 608 thereunder,[13] which featured a ''limit up-limit down'' mechanism.

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, *i.e.,* the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors [14] are required to disseminate such National Best Bid or National Best Offer [15] with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price band, *i.e.,* the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, *i.e.,* the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.[16]

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.[17] The first phase of the Plan shall be implemented beginning April 8, 2013.[18]

III. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

In light of and in connection with the Plan, the Exchange proposes to amend its rules to address certain option order types, order handling procedures, obvious error and market-maker quoting obligations.[19] The Exchange believes these modifications will protect investors because when an underlying security is in a limit or straddle state (collectively referred to as a ''limit up-limit down state''), there will not be a reliable price for the security to serve as a benchmark for the price of the option. In addition, the Exchange believes these changes are warranted because the width of the options markets might be compromised during the limit up-limit down states and, thus, the quality of execution may be adversely impacted.

A. Exchange Rule 6.39 and the Plan

The Exchange proposes to add Exchange Rule 6.39 to codify the changes occurring throughout its rulebook in connection with the Plan. The Exchange proposes to name Rule 6.39 as ''Equity Market Plan to Address Extraordinary Market Volatility''. The Exchange also plans to add new rule text that will define the Plan as it applies to the Exchange, and will describe the location of the other rule changes associated with the Plan. The proposed changes to Rule 6.39 will essentially serve as a roadmap for the Exchange's universal changes due to the implementation of the Plan.

B. Order Handling During the Limit Up-Limit Down State

The Exchange proposes to add Exchange Rule 6.39 and modify Exchange Rules 6.10, 6.11, 6.13 and 6.18 to address how certain Exchange order types will be handled when the underlying security of such orders is in a limit up-limit down state. The proposed rule change will address how market orders,[20] market-on-close,[21] stop orders,[22] and stock option orders [23] will

[10] *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033) (describing the ''second stage'' of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the ''third stage'' of the single-stock circuit breaker pilot).

[11] NYSE Euronext filed on behalf of New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (''NYSE MKT''). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR–NYSEAmex–2012–32).

[12] 15 U.S.C. 78k–1.

[13] 17 CFR 242.608.

[14] As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. *See id.*

[15] ''National Best Bid'' and ''National Best Offer'' has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. *See id.*

[16] As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

[17] *See* ''Limit Up-Limit Down Plan,'' *supra* note 9. *See also* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

[18] *See* ''Second Amendment to Limit Up-Limit Down Plan,'' *supra* note 17.

[19] Specifically, the Exchange proposes to make changes to Exchange Rules Rule 6.10, ''Order Types Defined,'' 6.11, ''Openings (and sometimes Closings),'' Rule 6.13, ''Complex Order Execution,'' Rule 6.15, ''Obvious Error and Catastrophic Errors,'' Rule 6.18, ''HAL,'' Rule 6.39, ''Equity Market Plan to Address Extraordinary Market Volatility,'' Rule 8.5, ''Obligations of Market-Makers, Rule 8.17, ''DPM Obligations,'' and Rule 8.19, ''DPM Participation Entitlements.'' *See* Notice and Amendment No. 1.

[20] *See* Exchange Rule 6.10 which defines a market order as ''an order to buy or sell a stated number of options contracts at the best price available at the time of execution.''

[21] *See* Exchange Rule 6.10(c)(2) which defines a market-on-close order designation as an order ''to be executed as close as possible to the closing bell, or during the closing rotation, and should be near to or at the closing price for the particular series of option contracts.''

[22] *See* Exchange Rule 6.10(c)(3), which defines a stop order as a market order ''to buy or sell when the market for a particular option contract reaches a specified price on the Exchange.''

[23] *See* Exchange Rule 6.13(a)(2) which defines a stock-option order as ''an order to buy or sell a

function on the Exchange upon the implementation of the Plan. The Exchange is proposing to add language to clarify that: (a) Any market order will be returned during limit up-limit down states unless it qualifies for a certain exception; [24] (b) market-on-close orders will not be elected if the underlying security is in a limit up-limit down state; (c) stop orders will not be triggered if the underlying security is in a limit up-limit down state, but will be held until the end of that state, at which time they will become eligible to be triggered; (d) stock-option orders will only execute if the calculated stock price is within the permissible bands.[25] In addition, if a message is sent to replace a limit order with a market order while the underlying is in a limit up-limit down state, the resting limit order will be cancelled and the replaced market order will also be cancelled. The Exchange represented that cancelling a market order in this scenario is consistent with its treatment of market orders that are received during a limit up-limit down state, and cancelling the original limit order would be consistent with the Exchange's current cancel and replace functionality.[26]

The Exchange stated that, although it has determined to continue options trading when a stock is in a limit up-limit down state, there will not be a reliable price for the underlying security to serve as a benchmark for the price of the option. Without a reliable underlying stock price, the Exchange stated that there is an enhanced risk of errors and improper executions. The Exchange also stated that adding a level of certainty for TPHs by specifying the treatment of such orders will encourage participation on the Exchange while the underlying security is in limit up-limit down states. Accordingly, the Exchange believes these order handling changes will best protect market participants after the implementation of the Plan by not allowing execution at unreasonable prices due to the shift in the stock prices.

The Exchange proposes to modify its opening procedures under Exchange Rule 6.11, ''Openings (and sometimes Closings).'' The Exchange proposes to add an Interpretation and Policy .03 to clarify that if the underlying security for a class of options enters into a limit up-limit down state when the class moves to opening rotation, any market orders entered that trading day currently opening, prior to the opening of that class, will be cancelled. The Exchange stated that this change is consistent with cancelling the market orders in general during a limit up-limit down state. The Exchange further believes this proposed change will help the Exchange to protect the TPHs from executing skewed orders during limit up-limit down states.

Next, the Exchange proposes to modify Exchange Rule 6.18, ''HAL.'' This functionality provides automated order handling in designated classes trading on the System for qualifying orders that are not automatically executed by the System.[27] When the Exchange receives a qualifying order that is marketable against the National Best Bid or Offer (''NBBO'') and/or the Exchange's best bid or offer (''BBO''),[28] HAL electronically exposes the order [29] at the NBBO price to allow Market-Makers appointed in that class, as well as all Trading Permit Holders (''TPHs'') acting as agent for orders, at the top of the Exchange's book in the relevant series (or all TPHs if allowed by the Exchange) to step up to the NBBO price.

The Exchange proposes to amend Rule 6.18 to modify the functioning of HAL with respect to market orders when the underlying security of the option is in a limit up-limit down state. Under the proposal, if an underlying security enters a limit up-limit down state while a market order is being exposed through HAL, the auction will end early, *i.e.,* upon the entering of the limit up-limit down state. Additionally, any unexecuted portion of the market order would be cancelled. The Exchange stated that because there is an uncertainty of market prices during a limit up-limit down state, terminating the HAL auction early and cancelling the market order will ensure that market orders do not receive an unanticipated price.[30] As such, the proposed rule changes would protect market participants by ensuring that they do not receive an executed order with an unanticipated price due to the change in the underlying security.

The Exchange also proposes to modify the treatment of complex orders on the Hybrid System and the Complex Order Auction (''COA'') process. Generally, on a class-by-class basis, the Exchange may activate COA, which is a process by which eligible complex orders [31] are given an opportunity for price improvement before being booked in the electronic complex order book (''COB'') or on a PAR workstation. Upon receipt of a COA-eligible order and a request from a TPH representing the order that such order be subjected to a COA, the Exchange will send a request for responses (''RFR'') message to all TPHs who have elected to receive RFR messages.[32] Each Market-Maker with an appointment in the relevant option class and each TPH acting as agent for orders resting at the top of the COB in the relevant options series may then submit responses to the RFR message during the Response Time Interval.[33]

The Exchange proposes to add to the COA rule that if, during COA, the underlying security of a market order enters a limit up-limit down state, the COA will end upon the entering of that state and the remaining portion of the order will cancel.

stated number of units of an underlying stock or a security convertible into the underlying stock * * * coupled with the purchase or sale of options contract(s) on the opposite side of the market.''

[24] Specifically, a market order submitted to initiate an Automated Improvement Mechanism will be accepted. The Exchange represented that such orders are entered with a contra order, and are thus effectively stopped because they must execute at a price at or better than the contra order. *See* Amendment No. 2.

[25] If the calculated price is not within the permissible Price Bands, the entire Stock-option order will be cancelled. The Exchange believes this is consistent with the Plan because it ensures that stock orders are not being electronically routed to stock venues for executions outside of the permissible Price Bands. *See id.*

[26] *See id.*

[27] Currently, the Exchange determines the eligible order size, eligible order types, eligible origin code (*i.e.,* public customer orders, non-Market-Maker broker-dealer orders and Market-Maker broker-dealer orders), and classes in which HAL is activated. *See* Exchange Rule 6.18.

[28] HAL will not electronically expose the order if the Exchange's quotation contains resting orders and does not contain sufficient Market-Maker quotation interest to satisfy the entire order.

[29] The duration of the exposure period may not exceed one second. *See* Exchange Rule 6.18(c) (describing the manner in which an exposed order is allocated under HAL); *see also* Exchange Rule 6.18(d) (listing the circumstances in which an exposure period would terminate early).

[30] *See* Amendment No. 1.

[31] An eligible complex order, referred to in Rule 6.13 as a ''COA-eligible order,'' means a complex order that, as determined by the Exchange on a class-by-class basis, is eligible for a COA considering the order's marketability (defined as a number of ticks away from the current market), size, complex order type and complex order origin type (*i.e.,* non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange). All determinations by the Exchange on COA-eligible order parameters are announced to Trading Permit Holders by Regulatory Circular. *See* Rule 6.18(c)(1)(B) and Interpretation and Policy .01 to Rule 6.18.

[32] *See* Exchange Rule 6.18(c)(3)(B). The RFR message will identify the component series, the size of the COA-eligible order and any contingencies, but will not identify the side of the market.

[33] *See* Exchange Rule 6.18(c)(3)(B). A ''Response Time Interval'' means the period of time during which responses to the RFR may be entered, the length of which is determined by the Exchange on a class-by-class basis but may not exceed three seconds. *See* Rule 6.18(c)(3)(B).

C. Market Maker Obligations and Participation Entitlements

The Exchange proposes to eliminate all market maker obligations for options in which the underlying security is in a limit up-limit down state. Currently, Exchange Rules 8.5 and 8.17 impose certain obligations on Market-Makers and DPMs, respectively, including obligations to provide continuous quotes.

The Exchange proposes to eliminate all market maker quoting obligations [34] in series of options when the underlying security is currently in a limit up-limit down state. According to the Exchange, eliminating all Market Maker obligations in connection with the implementation of the Plan is the most effective way to ensure the options markets will not be compromised when the underlying security enters a limit up-limit down state. Specifically, there may not be reliable prices for an underlying security during a limit up-limit down state. Additionally, it may be difficult or not possible for a market participant to hedge the purchase or sale of an option if the bid or offer of an underlying security may not be executable due to a limit up-limit down state. Given the possible effects of the limit up-limit down state, the Exchange anticipates that Exchange Market-Makers may be forced to change behaviors during these periods. In an effort to protect the investors in the options market while the underlying security is in a limit up-limit down state, the Exchange believes that eliminating quoting obligations is the more effective way for this protection.

Although the Exchange is proposing to relieve market makers of their quoting obligations when the underlying is in a limit up-limit down state, the Exchange is proposing that Market-Makers and DPMs may still receive participation entitlements pursuant to the proposed rules in all series in their assigned classes in which they are quoting, even in series in which they are not required to provide continuous electronic quotes under the Exchange Rules. The Exchange stated that market makers already receive participation entitlements in series in which they are not required to quote; thus, under the proposed rule change, the market would continue to function as it does now with respect to how entitlements are allocated to Market-Makers. The Exchange believes this benefit is appropriate, as it incentivizes Market-Makers to quote in as many series as possible in their appointed classes, even those series in which the underlying security has entered into a limit up-limit down state. The Exchange stated that it is attempting to better encourage Market-Makers to quote even though they will not have the obligation. If market makers do choose to quote, the Exchange believes they should be entitled to receive the entitlement for such quoting as appropriate.

D. Nullification and Adjustment of Options Transactions

In connection with the implementation of the Plan, the Exchange proposes to adopt Interpretation and Policy .08 to Rule 6.15 to exclude transactions in options that overlay a security during a Limit State or Straddle State from the obvious error pricing provision in Rule 6.15(a)(1) for a one year pilot basis from the date of adoption of the proposed rule change. Additionally, the Exchange proposes to add rule text to provide that transactions in options that overlay an NMS stock that occur during a Limit State or Straddle State may be reviewed on an Exchange motion. The Exchange also proposes to provide the Commission with data and analysis during the duration of the pilot as requested.

Under Rule 6.15, an Obvious Error occurs when the execution price of an electronic transaction is above or below the theoretical price for the series by a specified amount. Pursuant to Rule 6.15(a)(3)(A), the theoretical price of an option series is currently defined, for series traded on at least one other options exchange, as the last national best bid price with respect to an erroneous sell transaction, and the last national best offer price with respect to an erroneous buy transaction, just prior to the trade. In certain circumstances, designated personnel in the Help Desk have the discretion to determine the theoretical price pursuant to Rule 6.15(a)(3)(B).[35]

The Exchange believes that neither method is appropriate during a Limit State or Straddle State. In Amendment No. 1, the Exchange noted that during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical value should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. The Exchange noted that determining theoretical value in such a situation would be often times very subjective rather than an objective determination and would give rise to additional uncertainty and confusion for investors. Similarly, the Exchange believes the application of the current rule would be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and would produce undesirable effects.

Ultimately, the Exchange believes that adding certainty to the execution of limit orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting a fair and orderly market. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying these provisions during such unusual market conditions.

Therefore, the Exchange proposes to adopt Interpretation and Policy .08 to Rule 6.15 to provide that transactions executed during a Limit State or Straddle State are not subject to review under Rule 6.15 for Obvious and Catastrophic Errors. In addition, in Amendment No. 1, the Exchange proposes to give Exchange Officers the authority to review transactions believed to be erroneous that occur during a Limit State or Straddle State, on its own motion.[36] According to the Exchange, this safeguard will provide the flexibility to act when necessary and appropriate, while also providing market participants with certainty that trades they effect with quotes and/or

[34] *See* Notice, *supra* note 3.

[35] Rule 6.15(a)(3)(B) provides that if there are no quotes for comparison purposes, designated personnel in the Help Desk will determine the theoretical price.

[36] Specifically, the Exchange is proposing to add language that states that in the interest of maintaining a fair and orderly market and for the protection of investors during a limit up-limit down state, the President of the Exchange or his/her designee, who shall be an officer of the Exchange but may not be a Permit Holder (''Exchange Officer''), may, on his or her own motion or upon request, determine to review any transition occurring on the Exchange during a limit up-limit down state that is believed to be erroneous. A transaction reviewed pursuant to this right may be nullified or adjusted only if it is determined by the Exchange officer that the transaction is erroneous as provided in Rule 6.15 (a)(1)–(3). A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The Exchange Officer may be assisted by the Help Desk in reviewing a transaction. In addition, the Exchange Officer shall act as soon as possible after receiving the notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. In no event shall the Exchange Officer act later than 8:30 a.m. (CT) on the next trading day following the date of the transaction at issue.

orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review on Exchange motion electronic transactions that occur during a Limit State or Straddle State under this provision, according to the Exchange, would enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. The Exchange also proposes to provide the Commission with data and analysis during the duration of the pilot as requested.

IV. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[37] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[38] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulation, 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.

A. Exchange Rule 6.39 and the Plan

Exchange Rule 6.39 lists changes to Exchange order types, order handling, obvious error, and market-maker quoting obligations that the Exchange is making in connection with the implementation of the Plan. The Exchange believes that the proposed changes to Rule 6.39 will describe to TPHs and other market participants where to find the changes associated with the Plan's implementation. Accordingly, the Commission finds that this change promotes clarity in connection with C2's proposed changes in response to the Limit up-Limit Down Plan and is therefore consistent with the Act.

B. Order Handling During the Limit Up-Limit Down State

As detailed above, the Exchange proposes to add language to clarify that: (a) Market orders, with a certain exception, will be returned during limit up-limit down states, (b) market-on-close orders will not be elected if the underlying security is in a limit up-limit down state, (c) stop orders will not be triggered while the underlying security is in a limit up-limit down state, and (d) stock-option orders will only execute if the calculated stock price is within the permissible bands. In addition, during a limit up-limit down state, if a message is sent to replace a limit order with a market order, the resting limit order will be cancelled and the replaced market order will also be cancelled.

The Commission finds that the Exchange's proposed method of handling such orders is consistent with Section 6(b)(5) of the Act. When the underlying stock enters a limit up-limit down state, the lack of a reliable price in that market could affect the options markets in various ways, including wider spreads and less liquidity. This could potentially mean that market orders, which contain no restrictions on the price at which they may execute, could receive executions at unintended prices if executed during the limit up-limit down state. As such, the proposed changes to reject market orders and market-on-close orders if the underlying is in a limit up-limit down state, to not trigger stop orders if the underlying is in a limit up-limit down state, and to cancel market orders that replace limit orders when the underlying is in a limit up-limit down state, are reasonably designed to prevent such orders from being executed at potentially unexpected prices.

At the same time, the proposed exception to the treatment of these orders—accepting market orders that are submitted to initiate an Automated Price Improvement Mechanism—is designed to take into account the fact that market orders submitted in this way may not be at the same risk as other market orders for executions at unexpected prices. Specifically, market orders submitted through the Automated Price Improvement Mechanism are submitted as pairs, and are effectively stopped because they must execute at a price at or better than the contra order.

The Exchange proposes to add an Interpretation and Policy .03 to Rule 6.11, which states that if the underlying security for a class of options enters into a limit up-limit down state when the class moves to opening rotation, any market orders entered that trading day will be cancelled. The Commission finds that this change is consistent with the Act in that it is reasonably designed to counter potential price dislocations that may occur if the underlying enters a limit up-limit down state during the opening by preventing market orders, which contain no restrictions on the price at which they may execute, from being executed at potentially unintended prices.

The Exchange also proposes that, if an underlying security enters a limit up-limit down state while a market order is being exposed through HAL, the auction will end early, and any unexecuted portion of the market order would be cancelled. The Commission believes that this provision will provide certainty to options market participants on how market orders submitted to HAL will be handled during limit up-limit down states. In addition, the Commission finds that this provision is consistent with the Act in that it is reasonably designed to counter potential price dislocations that may occur if the underlying enters a limit up-limit down state while the HAL functionality is underway by preventing market orders, which contain no restrictions on the price at which they may execute, from being executed at potentially unintended prices.

The Exchange proposes to amend the COA rule so that, if during a COA of a market order, the underlying security of an option enters a limit up-limit down state, the COA will end and the remaining portion of the order, if a market order, will cancel. As with the proposed change to HAL, the Commission believes that this provision is consistent with the Act in that it will provide certainty to options market participants on how market orders submitted to COA will be handled during limit up-limit down states. In addition, the Commission finds that this provision is reasonably designed to counter potential price dislocations that may occur if the underlying enters a limit up-limit down state while a COA is underway by preventing market orders, which contain no restrictions on the price at which they may execute, from being executed at potentially unintended prices.

C. Market Maker Obligations

The Commission finds that the proposal to suspend a market maker's

[37] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[38] 15 U.S.C. 78f(b).

obligations when the underlying security is in a limit up-limit down state is consistent with the Act. During a limit up-limit down state, there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's decision to suspend a market maker's obligations in these limited circumstances is consistent with the Act. The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring the quoting requirements that are being amended in this proposed rule change and determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

The Commission also finds that the proposal to maintain participation entitlements for market makers in all series in their assigned classes in which they are quoting, including in series for which the underlying security is in a limit up-limit down state and for which they are not required to provide continuous electronic quotes under the Exchange Rules, is consistent with the Act. To the extent that market makers are only eligible for participation entitlements if they are quoting at the best price on the Exchange, this proposal is reasonably designed to incentivize Market-Makers to quote more aggressively when the underlying security has entered into a limit up-limit down state than they might otherwise quote, potentially providing additional liquidity and price discovery. To the extent that, under this proposal, market makers would receive participation entitlements in series in which they are not required to quote, the Commission notes that this aspect of the proposal is consistent with the current application of participation entitlements.

D. Nullification and Adjustment of Options Transactions

The Commission finds that the Exchange's proposed rule change to suspend certain aspects of Rule 6.15 during a Limit State or Straddle State is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[39] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In Amendment No. 1, the Exchange notes its belief that suspending certain aspects of Rule 6.15 during a Limit State or Straddle State will ensure that limit orders that are filled during a Limit State or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange during Limit States and Straddle States, thus promoting fair and orderly markets.

The Exchange, however, has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. The Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude electronic trades that occur during a Limit State or Straddle State from the obvious and catastrophic pricing error provisions and the nullification or adjustment provisions of Rule 6.15. The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit States and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states in Amendment No. 1 that by rejecting market orders and not electing stop orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Additionally, the Exchange notes the existence of SEC Rule 15c3–5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

The Exchange believes that the aspect of the proposed rule change that will continue to allow the Exchange to review on its own motion electronic trades that occur during a Limit State or a Straddle State is consistent with the Act because it would provide flexibility for the Exchange to act when necessary

[39] 15 U.S.C. 78f(b)(5).

and appropriate to nullify or adjust a transaction and will enable the Exchange to account for unforeseen circumstances that result in obvious errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. The Exchange represents that it will administer this provision in a manner that is consistent with the principles of the Act. In addition, the Exchange represents that it will create and maintain records relating to the use of the authority to act on its own motion during a Limit State or Straddle State.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 4, 2013, the Exchange submitted a letter stating that it would provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.[40] This will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act[41] for approving the proposed rule change on an accelerated basis. This proposal is related to the Plan, which will become operative on April 8, 2013, and aspects of the proposal, such as rejecting market orders and not electing stop orders during a limit up-limit down state, are designed to prevent such orders from receiving poor executions during those times. In granting accelerated approval, the proposed rule change, and its corresponding protections, will take effect upon the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2013–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2013–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–C2–2013–013 and should be submitted on or before May 3, 2013.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[42] that the proposed rule change (SR–C2–2013–013), as modified by Amendments Nos.

[40] In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Interpretation and Policy .08 to Rule 6.15, it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) The options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Straddle States and Limit States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle state. *See* C2 Letter, *supra* note 7.

[41] 15 U.S.C. 78s(b)(2).

[42] 15 U.S.C. 78s(b)(2).

1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08613 Filed 4–11–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69330; File No. SR–BOX–2013–13]

Self-Regulatory Organizations; BOX Options Exchange LLC; Order Approving, on an Accelerated Basis, Proposed Rule Change To Clarify How the Exchange Will Treat a Market Maker's Quoting Obligations When the Underlying Equity Security Enters a Limit State or Straddle State

April 5, 2013.

I. Introduction

On March 8, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to clarify how the Exchange will treat a Market Maker's quoting obligations when the underlying equity security enters a Limit State or Straddle State. The proposed rule change was published for comment in the **Federal Register** on March 18, 2013.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.[5] This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.[6] The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.[7]

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan[8] pursuant to Section 11A of the Act,[9] and Rule 608 thereunder,[10] which featured a ''limit up-limit down'' mechanism (as amended, the ''Limit Up-Limit Down Plan'' or ''Plan'').

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, i.e., the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors[11] are required to disseminate such National Best Bid or National Best Offer[12] with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price band, i.e., the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, i.e., the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.[13]

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.[14] The first phase of the Plan

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[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 69109 (March 11, 2013), 78 FR 16749.

[5] The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission. *See* Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf*.

[6] For further discussion on the development of the single-stock circuit breaker pilot program, *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (''Limit Up-Limit Down Plan'' or ''Plan'').

[7] *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033) (describing the ''second stage'' of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the ''third stage'' of the single-stock circuit breaker pilot).

[8] NYSE Euronext filed on behalf of New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (''NYSE MKT''). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR–NYSEAmex–2012–32).

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. *See id.*

[12] ''National Best Bid'' and ''National Best Offer'' has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. *See id.*

[13] As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

[14] *See* ''Limit Up-Limit Down Plan,'' *supra* note 6. *See also* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February

shall be implemented beginning April 8, 2013.[15]

III. Description of the Proposal

In light of and in connection with the Limit Up-Limit Down Plan, the Exchange is amending IM–7080–1 (Trading Conditions During Limit State or Straddle State) to provide that if the underlying security has entered a Limit State or Straddle State, the time in these States shall not count for purposes of calculating whether a Market Maker is fulfilling its obligations for continuous quotes under BOX Rule 8050(e).

Currently, under BOX Rule 8050(e), the Exchange requires Market Makers to enter continuous bids and offers for the options series to which it is registered for at least 60% of the time that the classes in which the Market Maker is registered are open for trading. The Exchange's proposal would suspend a Market Maker's continuous quoting obligation for the duration that an underlying NMS stock is in a Limit State or a Straddle State. As a result, when calculating the duration of time necessary for a Market Maker to meet its quoting obligations, such time will not include the duration that the underlying is in a Limit State or Straddle State.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to suspend a Market Maker's obligations when the underlying security is in a limit up-limit down state is consistent with the Act. During a limit up-limit down state, there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's decision to suspend a Market Maker's obligations in these limited circumstances is consistent with the Act.

The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring the quoting requirements that are being amended in this proposed rule change and determine if any necessary adjustments are required to ensure that they remain consistent with the Act

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act [18] for approving the proposed rule change on an accelerated basis. The proposal is related to the Plan, which will become operative on April 8, 2013.[19] Without accelerated approval, the proposed rule change, and any attendant benefits, would take effect after the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [20] that the proposed rule change (SR–BOX–2013–13) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08555 Filed 4–11–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69336; File No. SR–BOX–2013–19]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on BOX

April 8, 2013.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule for trading on the BOX Market LLC (''BOX'') options facility. While the change to the fee schedule pursuant to this proposal will be effective upon filing, the change will become operative on April 1, 2013. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y- Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

[15] *See* ''Second Amendment to Limit Up-Limit Down Plan,'' *supra* note 14.

[16] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78s(b)(2)

[19] *See supra* note 15.

[20] 15 U.S.C. 78f(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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, Proposed Rule Change

1. Purpose

The Exchange proposes to amend the BOX Fee Schedule to specify in Section II (Liquidity Fees and Credits) that when a non-immediately marketable order executes against a PIP Order, therefore becoming an Unrelated Order, it shall be charged as an Improvement Order.

Currently transactions in the BOX PIP are either assessed a fee for adding liquidity or provided a credit for removing liquidity regardless of account type.[5] PIP Orders (*i.e.,* the agency orders opposite the Primary Improvement Order [6]) receive the ''removal'' credit and Improvement Orders [7] are charged the ''add'' fee. PIP transactions in classes with a minimum price variation of $0.01 (*i.e.,* Penny Pilot classes where the trade price is less than $3.00 and all series in QQQ, SPY, and IWM) are assessed a fee for adding liquidity of $0.30, regardless of account type. For PIP transactions where the minimum price variation is greater than $0.01 (*i.e.,* all non-Penny Pilot Classes, and Penny Pilot Classes where the trade price is equal to or greater than $3.00, excluding QQQ, SPY, and IWM) the fee for adding liquidity is $0.75, regardless of account type. These liquidity fees and credits are part of an Exchange Pilot Program (''Program'') that has been in effect on BOX since February 2012 and was recently extended through August 31, 2013.[8]

An Unrelated Order is defined as any non-Improvement Order entered on the BOX market during a PIP.[9] Currently all Unrelated Orders are charged as Non-Auction Transactions under Section II.C. of the Exchange's Fee Schedule and are subject to a per contract fee of $0.30 for adding liquidity in Penny Pilot Classes, and $0.75 for adding liquidity in non-Penny Pilot Classes.

The purpose of this proposed rule change is to specify that, when an Unrelated Order that is not immediately marketable executes against a PIP Order, it shall be treated as an Improvement Order and charged the applicable ''add'' fee under Section II.A of the Exchange's Fee Schedule.[10] In the current Fee Schedule the classes to which the liquidity fees and credits are applied are described differently in PIP Transactions compared to Non-Auction Transactions, therefore creating a discrepancy in how similar orders are charged. For example, in Section II.A (PIP Transactions) the liquidity fees and credits assessed differ depending on the Minimum Price Variation of the order. If the transaction is in a Penny Pilot Class where the trade price is less than $3.00 or in all series in QQQ, SPY & IWM it is assessed an ''add'' fee or ''removal'' credit of $0.30. If the transaction is in a Non-Penny Pilot Class or in a Penny Pilot class where the trade price is equal to or greater than $3.00, excluding QQQ, SPY & IWM, then it is assessed an ''add'' fee or ''removal'' credit of $0.75. In Section II.C. (Non-Auction Transactions) the liquidity fees and credits assessed differ depending if the transaction is in a Penny Pilot Class ($0.30 ''add'' fee or ''removal'' credit) or Non-Penny Pilot Class ($0.75 ''add'' fee or ''removal'' credit).

The proposed change will have no impact on the liquidity fees charged to a Participant for a majority of non-immediately marketable Unrelated Orders that execute against a PIP Order. For example, in a Non-Auction Non-Penny Pilot transaction, an order that adds liquidity is currently charged an ''add'' fee of $0.75. If this order interacts with the PIP under the current fee schedule, thereby becoming an Unrelated Order, the ''add'' fee remains the same regardless of the minimum price variation of the class involved.

However, this proposed change will result in a greater ''add'' fee for orders in Penny Pilot Classes where the trade price is equal to or greater than $3.00, excluding QQQ, SPY, and IWM. For example, a Non-Auction Penny Pilot transaction that adds liquidity is currently charged an ''add'' fee of $0.30. Under the proposed change, if this order interacts with the PIP, thereby becoming an Unrelated Order, the ''add'' fee will remain at $0.30 if the order is in a Penny Pilot class where the trade price is less than $3.00 or in QQQ, SPY, and IWM. The fee will only be raised to $0.75 if the order is in a Penny Pilot Class where the trade price is equal to or greater than $3.00, excluding QQQ, SPY, and IWM.

The tables below illustrate how the proposed change will affect the total charged for each type of transaction.

TRANSACTIONS IN NON-PENNY PILOT CLASSES

	Exchange fee [11]	Add fee	Total charged	Effect
Treated as a Non-Auction Transaction under the current Fee Schedule	$0.40	$0.75	$1.15	None.
Treated as an Improvement Order under the proposed change	0.40	0.75	1.15	None.

[5] *See* Section II of the BOX Fee Schedule.

[6] An Improvement Order is a response to a PIP auction.

[7] A Primary Improvement Order is the matching contra order submitted to the PIP on the opposite side of an agency order.

[8] *See* Securities Exchange Act Release Nos. 66278 (January 30, 2012), 77 FR 5590 (February 3, 2012) (SR–BX–2011–046), (Commission Order Granting Accelerated Approval of the BOX Credits and Fees for PIP Transactions on a pilot basis); 66979 (May 14, 2012), 77 FR 29740 (May 18, 2012) (SR–BOX–2012–002) (Notice of Filing and Immediate Effectiveness to adopt the Fee Schedule for trading on BOX which included the Program); and 69054 (March 7, 2013), 78 FR 16025 (March 13, 2013) (SR–BOX–2013–09) (Notice of Filing and Immediate Effectiveness to extend the PIP Fee Pilot Program).

[9] BOX Rule 7150(a).

[10] Because the Unrelated Order is not immediately marketable, it will rest on the BOX Book and be charged the appropriate add fee unless it interacts with a PIP Order. In contrast, when an immediately marketable Unrelated Order is received it will execute against the PIP Order under BOX Rule 7150(j). This proposed rule change does not affect orders that are immediately marketable upon entry to BOX because under the Locked/Crossed Market plan, an immediately marketable Unrelated Order may have be [sic] routed from [sic] away exchange and submitted to BOX. The Exchange does not believe it should be subject to the PIP Transaction ''add'' fee since the Locked/Crossed Market plan may have required that the order be sent to BOX and a customer has no control over where this order is routed.

[11] The order will continue to be charged as a Non-Auction transaction for purposes of assessing Exchange Fees under Section I of the BOX Fee Schedule.

TRANSACTIONS IN PENNY PILOT CLASSES

	Exchange fee	Add fee	Total charged	Effect
Treated as a Non-Auction Transaction under the current Fee Schedule	$0.40	$0.30	$0.70	None.
Treated as an Improvement Order under the proposed change (Minimum Price Variation of 1 Cent).	0.40	0.30	0.70	None.
Treated as an Improvement Order where the under the proposed change (Minimum Price Variation of > 1 Cent).	0.40	0.75	1.15	Increased by $0.40.

Therefore, as demonstrate above, the only difference in ''add'' fees is in the last row of possible orders, here there is a potential $0.40 fee increase. The Exchange notes that this proposed change will only apply to non-immediately marketable Unrelated Orders that are entered on the BOX market.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[12] in general, and 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 BOX Participants and other persons using its facilities.

The Exchange believes it is reasonable and equitable to treat a non-immediately marketable Unrelated Order that executes against a PIP Order as an Improvement Order for purposes of the Exchange's liquidity fees. The PIP liquidity fees and credits are intended to attract order flow to the Exchange by offering incentives to all market participants to participate in the PIP. Currently a Participant that submits an Unrelated Order which then executes against a PIP Order receives the same trading benefit as a Participant who submits an Improvement Order, but is sometimes assessed a lesser ''add'' fee. While non-immediately marketable Unrelated Orders are not typically submitted on the opposite side of a PIP Order, they should be charged the fair and appropriate ''add'' fee once they execute against a PIP Order. Furthermore, as demonstrated above this change will have no impact on the liquidity fees charged to a Participant for a majority of non-immediately marketable Unrelated Orders that execute against a PIP Order.

The Exchange believes the proposed change to be reasonable. As noted above, the fees and credits for PIP transactions are intended to attract order flow to the Exchange by offering incentives to all market participants to submit their orders to the PIP for potential price improvement. As a result, the Exchange credits Participants who submit a PIP order and collects a fee from Participants who respond to a PIP through an Improvement Order. A non-immediately marketable Unrelated Order that executes against a PIP Order as an Improvement Order will not necessarily result in additional revenue to the Exchange, but will simply allow BOX to continue to provide the credit incentives to Participants to attract additional order flow to the PIP. In order to continue to offer these incentives for price improvement the Exchange needs to ensure that its liquidity fees and credits remain revenue neutral by charging orders that are executing in the same way the same fee.

The Exchange believes it is appropriate to provide incentives to market participants to use PIP, resulting in potential benefit to customers through potential price improvement and to all market participants to provide greater liquidity on BOX. The Exchange believes that treating non-immediately marketable Unrelated Orders as Improvement Orders for the purpose of liquidity fees and credits will not deter Participants from seeking to add liquidity to BOX so that they may interact with other Participants seeking to remove liquidity.

Furthermore, this change will only affect the liquidity fees charged for a small percentage of non-immediately marketable Unrelated Order transactions that execute against a PIP Order, those in Penny Pilot Classes where the trade price is equal to or greater than $3.00, excluding QQQ, SPY, and IWM under the PIP Fee Pilot Program.[14] The Exchange currently offers additional incentives to market participants for PIP transactions in these specified classes because such options have wider spreads and provide greater opportunity for market participants to offer price improvement. The Exchange believes it is reasonable and equitable to treat a non-immediately marketable Unrelated Order that executes against this type of PIP transaction the same liquidity fee that an Improvement Order would be charged.

The Exchange believes that treating non-immediately marketable Unrelated Orders as Improvement Orders is equitable and not unfairly discriminatory because the applicable liquidity fees will apply uniformly to all categories of participants, across all account types. The Exchange operates within a highly competitive market in which market participants can readily direct order flow to other competing venues if they deem fees at a particular venue to be excessive. BOX and the other options exchanges are engaged in an intense competition on price (and other dimensions of competition) to attract order flow from order flow providers. Accordingly, the fees assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those Participants that opt to send orders to the Exchange rather than to a competing venue. Further, the Exchange believes that the current PIP transaction liquidity fees and credits it assesses are fair and reasonable and must be competitive with fees and credits in place on other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. With this proposed rule change, non-immediately marketable Unrelated Orders executing against PIP Orders will be subject to fees that are already in place on the Exchange. These types of orders are currently subject to similar ''add'' fees and the proposed change will better align the applicable liquidity fees. The Exchange does not believe that this change would disincentives [sic] a market participant from sending in an Unrelated Order, in a majority of situations there would be [sic] change to the ''add'' fee assessed and the Participant submitting the order is receiving the benefit of executing

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] *See supra,* note 8.

against the PIP Order and the allocation that follows after the conclusion of the PIP. The Exchange believes that the proposed change promotes competition, as it is designed to allow the Exchange to continue compete for order flow and offer greater opportunities for price improvement. As mentioned above, liquidity fees and credits do not necessarily result in additional revenue to the Exchange, but will simply allow BOX to continue to provide the credit incentives to Participants to attract additional order flow to the PIP. In order to continue to offer these incentives for price improvement the Exchange needs to ensure that its liquidity fees and credits remain revenue neutral by charging orders that are executing in the same way the same fee.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [15] and Rule 19b–4(f)(2) thereunder,[16] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2013–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File Number SR–BOX–2013–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–19 and should be submitted on or before May 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

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[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69341; File No. SR–NASDAQ–2013–048]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Accelerated Approval of a Proposed Rule Change To Adopt Chapter V, Section 3 Subparagraph (d)(iv) Regarding Obvious Error or Catastrophic Error Review

April 8, 2013.

I. Introduction

On March 14, 2013, The NASDAQ Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for how the Exchange proposes to treat obvious and catastrophic options errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan''). The proposed rule change was published for comment in the **Federal Register** on March 20, 2013.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

Since May 6, 2010, when the financial markets experienced a severe disruption, the equities exchanges and the Financial Industry Regulatory Authority have developed market-wide measures to help prevent a recurrence. In particular, on May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[5] The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands, creating a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks.[6]

In connection with the implementation of the Plan, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69142 (March 15, 2013), 78 FR 17251 (''Notice'').

[4] *See* Letter to Heather Seidel, Associate Director, Division of Trading and Markets, Commission, from Thomas A. Wittman, Senior Vice President, The NASDAQ Stock Market LLC, dated April 5, 2013 (''Nasdaq Letter'').

[5] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498.

[6] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

Exchange proposes to adopt new Chapter V, Section 3(d)(iv) to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Chapter V, Sections 6(b) or 6(f), for a one year pilot basis from the date of adoption of the proposed rule change.[7] The Exchange proposes to retain the ability to review trades that occur during a Limit State or Straddle State by Exchange motion pursuant to Chapter V, Section 6(d)(i).

Under Sections 6(b)(i) and (f)(i), obvious and catastrophic errors are calculated by determining a theoretical price and applying such price to ascertain whether the trade should be nullified or adjusted. Obvious and catastrophic errors are determined by comparing the theoretical price of the option, calculated by one of the methods in Section 6(c), to an adjustment table in Section 6(b)(i) for obvious errors or Section 6(f)(i) for catastrophic errors. Generally, the theoretical price of an option is the National Best Bid and Offer (''NBBO'') of the option. In certain circumstances, Exchange officials have the discretion to determine the theoretical price.[8]

The Exchange believes that neither of these methods is appropriate during a Limit State or Straddle State. Under Section 6(c)(i), the theoretical price is determined with respect to the NBBO for an option series just prior to the trade. According to the Exchange, during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical price should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. Because the approach under Section 6(c)(i) by definition depends on a reliable NBBO, the Exchange does not believe that approach is appropriate during a Limit State or Straddle State. Additionally, because the Exchange system will only trade through the theoretical bid or offer if the Exchange or the participant (via an ISO order) has accessed all better priced interest away in accordance with the Options Order Protection and Locked/Crossed Markets Plan, the Exchange believes potential trade reviews of executions that occurred at the participant's limit price and also in compliance with the aforementioned Plan could harm liquidity and also create an advantage to either side of an execution depending on the future movement of the underlying stock.

With respect to Section 6(c)(ii), affording discretion to Exchange staff to determine the theoretical price and thereby, ultimately, whether a trade is busted or adjusted and to what price, the Exchange notes that it would be difficult to exercise such discretion in periods of extraordinary market volatility and, in particular, when the price of the underlying security is unreliable. The Exchange again notes that the theoretical price in this context would be subjective. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting fair and orderly markets. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying these provisions during such unusual market conditions.

Additionally, the Exchange proposes to provide that trades would not be subject to review under Section 6(b)(ii) during a Limit or Straddle State. Under Section 6(b)(ii), a trade may be nullified or adjusted where an execution occurred in a series quoted no bid. The Exchange believes that these situations are not appropriate for an error review because they are more likely to result in a windfall to one party at the expense of another in a Limit State or Straddle State, because the criteria for meeting the no-bid provision are more likely to be met in a Limit State or Straddle State, and unlike normal circumstances, may not be a true reflection of the value of the series being quoted.

In response to these concerns, the Exchange proposes to adopt Section 3(d)(iv) to provide that trades are not subject to an obvious error or catastrophic error review pursuant to Section 6(b) and 6(f) during a Limit State or Straddle State. In addition, proposed Section 3(d)(iv) also will include a qualification that nothing in proposed Section 3(d)(iv) will prevent electronic trades from being reviewed on Exchange motion pursuant to Section 6(d)(i). According to the Exchange, this safeguard will provide the flexibility to act when necessary and appropriate, while also providing market participants with certainty that trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review on Exchange motion electronic transactions that occur during a Limit State or Straddle State under this provision, according to the Exchange, would enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors.

III. Discussion

The Commission finds that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In the filing, the Exchange notes its belief that suspending certain aspects of Chapter V, Section 6 during a Limit State or Straddle State will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in

[7] The Exchange stated that various members of the Exchange staff have spoken to a number of member organizations about obvious and catastrophic errors during a Limit State or Straddle State and that a variety of viewpoints emerged, mostly focused on having many trades stand, on fairness and fair and orderly markets and on being able to re-address the details during the course of the pilot, if needed.

[8] Specifically, under Section 6(c), the theoretical price is determined in one of two ways: (i) If the series is traded on at least one other options exchange, the last National Best Bid price with respect to an erroneous sell transaction and the last National Best Offer price with respect to an erroneous buy transaction, just prior to the transaction; or (ii) as determined by MarketWatch as defined in Chapter I, if there are no quotes for comparison purposes.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange during Limit States and Straddle States, thus promoting fair and orderly markets.

The Exchange, however, has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. The Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Section 6(b) or 6(f). The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states that by rejecting market orders and stop orders, and cancelling pending market orders and stop orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Additionally, the Exchange notes the existence of SEC Rule 15c3–5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Finally, with respect to limit orders that will be executable during Limit States and Straddle States, the Exchange states that it applies price checks to limit orders that are priced sufficiently far through the NBBO. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

The Exchange also believes that the aspect of the proposed rule change that will continue to allow the Exchange to review on its own motion electronic trades that occur during a Limit State or a Straddle State is consistent with the Act because it would provide flexibility for the Exchange to act when necessary and appropriate to nullify or adjust a transaction and will enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. The Exchange represents that it recognizes that this provision is limited and that it will administer the provision in a manner that is consistent with the principles of the Act. In addition, the Exchange represents that it will create and maintain records relating to the use of the authority to act on its own motion during a Limit State or Straddle State.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 5, 2013, the Exchange submitted a letter stating that it would provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.[11] This will allow the Commission, the Exchange, and other interested parties

[11] In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Section 3(d)(iv), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) The options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. *See* Nasdaq Letter, *supra* note 4.

to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

Finally, the Commission notes that the Plan, to which these rules relate, will be implemented on April 8, 2013. Accordingly, for the reasons stated above, and in consideration of the April 8, 2013 implementation date of the Plan, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the Exchange's proposal prior to the 30th day after the publication of the notice in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASDAQ–2013–048), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08605 Filed 4–11–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69337; File No. SR–ISE–2013–29]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

April 8, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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 ISE proposes to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the manner in which the fees for Crossing Orders [3] and the Fee for Responses to Crossing Orders [4] is [sic] applied for regular and complex orders traded on the Exchange. The fee for Crossing Orders and the fee for Responses to Crossing Orders discussed below apply to both standard options and Mini options traded on the Exchange. The Exchange's Schedule of Fees has separate tables for fees and rebates applicable to standard options and Mini Options. The Exchange notes that while the discussion below notes the fees and rebates for standard options, the fees and rebates for Mini Options, which are not discussed below, are 1/10th of the fees and rebates for standard options.[5]

First, the Exchange currently charges a fee of $0.20 per contract to Market Maker, Market Maker Plus, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders (except for Priority Customer, this fee is currently $0.00 per contract) for regular Crossing Orders in the Select Symbols.

The Exchange also currently charges a fee of $0.20 per contract (for largest leg only) to Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders (except for Priority Customer, this fee is currently $0.00 per contract) for complex Crossing Orders in all symbols.

As an incentive to attract crossing orders for execution in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate. This rebate is provided to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism, Price Improvement Mechanism and Solicited Order Mechanism. This rebate currently applies to regular and complex orders in the Select Symbols. For the Facilitation and Solicited Order Mechanisms, the rebate is currently $0.15 per contract. For the Price Improvement Mechanism, the rebate is currently $0.25 per contract. The Exchange does not currently charge an execution fee for contracts that receive the rebate.

The Exchange now proposes to apply the existing crossing order fees for the full size of a crossing order, regardless if a portion of the order also receives a rebate. For example, assume a member enters a facilitation order for 1000 contracts; a market maker responds and trades 200 contracts; and the remaining 800 contracts are traded by the member that entered the order. Currently, the member that entered the order is charged a crossing fee for the 800 contracts it executed and receives a rebate for the 200 contracts that were executed by the market maker. Under this proposed rule change, the member that entered the order will be charged an

[12] 15 U.S.C. 78s(b)(2). The Commission noticed substantially similar rules proposed by NYSE MKT LLC and NYSE Arca, Inc. with a full 21 day comment period. *See* Securities Exchange Act Release No. 69033, 78 FR 15067 (March 8, 2013) and Securities Exchange Act Release No. 69032, 78 FR 15080 (March 8, 2013).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Crossing Order is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of the Schedule of Fees, orders executed in the Block Order Mechanism are also considered Crossing Orders. *See* Preface, ISE Schedule of Fees.

[4] ''Responses to Crossing Order'' (other than Regular Orders in Non-Select Symbols) is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. ''Responses to Crossing Order'' (for Regular Orders in Non-Select Symbols) is any response message entered with respect to a specific auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. *See* Preface, ISE Schedule of Fees.

[5] *See* SR–ISE–2013–28 (not yet published).

execution fee for the full size of the order (1000 contracts) and receive a rebate for any portion of the order it did not execute (200 contracts).

Second, the Exchange currently charges a Fee for Responses to Crossing Orders for regular orders in Non-Select Symbols, as follows: (i) $0.20 per contract to Market Maker (for orders sent by Electronic Access Members), Firm Proprietary/Broker-Dealer, Professional Customer, Priority Customer and Priority Customer (Singly Listed Symbols) orders; (ii) $0.45 per contract for Non-ISE Market Maker orders; and (iii) $0.18 per contract for Market Maker orders. This fee was adopted in January 2007 and has always been applied to ''response messages'' entered with respect to a particular broadcast message, but not to orders that are received on the limit order book after an auction commences.[6]

The Exchange later adopted a similar response fee for Regular Orders in Select Symbols,[7] for complex orders in Select Symbols [8] of $0.40 per contract, and for complex orders in Non-Select Symbols [9] for responses to special orders,[10] but specified that a ''response'' is any contra-side interest submitted after the commencement of an auction. Thus, the fees for Regular Orders in Select Symbols and all complex orders are applied to both response messages and to orders received on the limit order book after an auction commences, whereas the fees for Regular Orders in Non-Select Symbols are applied to response messages.

The distinction noted above is reflected in the Preface of the fee schedule where ''Responses to Crossing Order'' (other than Regular Orders in Non-Select Symbols) is defined as any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM, while ''Responses to Crossing Order'' (for Regular Orders in Non-Select Symbols) is defined as any response message entered with respect to a specific auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

The Exchange now proposes to charge the Fee for Responses to Crossing Orders in a consistent manner across all symbols. Accordingly, the Exchange proposes to adopt a single definition that applies to regular and complex orders in all symbols by removing the term ''Responses to Crossing Order'' (for Regular Orders in Non-Select Symbols) entirely and renaming the term ''Responses to Crossing Order'' (other than Regular Orders in Non-Select Symbols) as simply ''Responses to Crossing Order.'' The Exchange is not proposing any change to the level of fees charged for responses to crossing orders; this proposed rule change only amends the manner in which the current fee is applied.

The Exchange has designated this proposed rule change to be operative on April 1, 2013.

2. Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and [sic] Exchange Act of 1934 (the ''Exchange Act'') [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes it is reasonable and equitable to charge the existing crossing order fees to the full size of a crossing order to recoup some of its costs of providing rebates to crossing orders and will result in a more equitable distribution among market participants of the costs associated with crossing orders. The Exchange believes the proposed fee to charge the existing crossing order fees to the full size of a crossing order is not unfairly discriminatory because the fee would apply uniformly to all categories of participants in the same manner. All market participants who execute crossing orders would be uniformly subject to these fees and all market participants whose orders are broken-up will continue to receive the break-up rebate at current levels.

The Exchange believes that its proposal to modify the application of the Fee for Responses to Crossing Orders in the Non-Select Symbols is both reasonable and equitable because the Exchange already applies this fee to the Select Symbols in the manner in which it proposes to apply to the Non-Select Symbols. With this proposed rule change, this fee will now be applied in a consistent manner across all symbols. The Exchange believes its proposal to uniformly apply the Fee for Responses to Crossing Order across all symbols is not unfairly discriminatory because the fee would apply uniformly to all categories of participants in the same manner. All market participants that submit a contra-side interest after the commencement of an auction in the Exchange's various auction mechanisms would be uniformly subject to these fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE 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. This proposed rule change, which proposes to apply fees to a full size of a crossing order and which proposes to apply an existing fee uniformly across all symbols, does not impose any burden on competition. With this proposed rule change, market participants that trade on the Exchange will be subject to fees for the full size of a crossing order and will continue to receive the rebate for the portion of the order that was not previously charged a fee. With this proposed rule change, market participants that respond to crossing orders will be subject to fees that are already in place on the Exchange. Therefore, this proposed rule change does not impose any additional burden on competition that is not necessary or appropriate in furthering the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[6] *See* Exchange Act Release No. 55060 (Jan. 8, 2007), 72 FR 2050 (Jan. 17, 2007) (SR–ISE–2006–72).

[7] *See* Exchange Act Release No. 63283 (Nov. 9, 2010), 75 FR 70059 (Nov. 16, 2010) (SR–ISE–2010–106).

[8] *See* Exchange Act Release No. 65550 (October 13, 2011), 76 FR 64984 (October 19, 2012 [sic]) (SR–ISE–2011–65). In this filing, the Exchange also adopted a response fee for complex orders for symbols that are in the Penny Pilot Program.

[9] *See* Exchange Act Release No. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84). This fee has since increased and is currently $0.82 per contract for Market Makers ($0.84 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, and $0.00 per contract for Priority Customer orders). *See* Exchange Act Release No. 68627 (January 11, 2013), 78 FR 3934 (January 17, 2013) (SR–ISE–2013–01).

[10] The term ''special order'' was changed to ''crossing order'' when the Exchange re-formatted its Schedule of Fees. *See* Exchange Act Release No. 67545 (July 31, 2012), 77 FR 46776 (August 6, 2012) (SR–ISE–2012–65).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [13] and subparagraph (f)(2) of Rule 19b–4 thereunder,[14] because it establishes a due, fee, or other charge imposed by ISE.

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 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–ISE–2013–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–29 and should be submitted on or before May 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08608 Filed 4–11–13; 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. 34–69344; File No. SR–Phlx–2013–29]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Accelerated Approval of a Proposed Rule Change To Address Obvious and Catastrophic Options Errors in Response to the Regulation NMS Plan To Address Extraordinary Market Volatility

April 8, 2013.

I. Introduction

On March 14, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for how the Exchange proposes to treat obvious and catastrophic options errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan''). The proposed rule change was published for comment in the **Federal Register** on March 20, 2013.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

Since May 6, 2010, when the financial markets experienced a severe disruption, the equities exchanges and the Financial Industry Regulatory Authority have developed market-wide measures to help prevent a recurrence. In particular, on May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[5] The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands, creating a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks.[6]

In connection with the implementation of the Plan, the Exchange proposes to adopt new Rule 1047(f)(v) to exclude electronic trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Rule 1092(a)(i) or (ii) and the nullification or adjustment provisions pursuant to Rule 1092(c)(ii)(E) or (F), for a one year pilot basis from the date of adoption of the proposed rule change.[7] The Exchange proposes to retain the ability to review electronic trades that occur during a Limit State or Straddle State by Exchange motion pursuant to Rule 1092(e)(i)(B).

Under Rule 1092(a)(i) and (ii), obvious and catastrophic errors are calculated by determining a theoretical price and applying such price to ascertain whether the trade should be nullified or adjusted. Pursuant to Rule 1092(a)(i) and (ii), obvious and catastrophic errors are determined by comparing the theoretical price of the option, calculated by one of the methods in Rule 1092(b), to an adjustment table in Rule 1092(a). Generally, the theoretical price of an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69141 (March 15, 2013), 78 FR 17262 (''Notice'').

[4] *See* Letter to Heather Seidel, Associate Director, Division of Trading and Markets, Commission, from Thomas A. Wittman, President, Phlx, dated April 5, 2013 (''Phlx Letter'').

[5] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498.

[6] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[7] The Exchange stated that various members of the Exchange staff have spoken to a number of member organizations about obvious and catastrophic errors during a Limit State or Straddle State and that a variety of viewpoints emerged, mostly focused on having many trades stand, on fairness and fair and orderly markets, and on being able to re-address the details during the course of the pilot, if needed.

option is the National Best Bid and Offer (''NBBO'') of the option. In certain circumstances, Exchange officials have the discretion to determine the theoretical price.[8]

The Exchange believes that none of these methods is appropriate during a Limit State or Straddle State. Under Rule 1092(b)(i), the theoretical price is determined with respect to the NBBO for an option series just prior to the trade. According to the Exchange, during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical price should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. Because the approach under Rule 1092(b)(i) by definition depends on a reliable NBBO, the Exchange does not believe that approach is appropriate during a Limit State or Straddle State. Additionally, because the Exchange system will only trade through the theoretical bid or offer if the Exchange or the participant (via an ISO order) has accessed all better priced interest away in accordance with the Options Order Protection and Locked/Crossed Markets Plan, the Exchange believes potential trade reviews of executions that occurred at the participant's limit price and also in compliance with the aforementioned Plan could harm liquidity and also create an advantage to either side of an execution depending on the future movement of the underlying stock.

With respect to Rule 1092(b)(ii) affording discretion to the Options Exchange Official to determine the theoretical price and thereby, ultimately, whether a trade is busted or adjusted and to what price, the Exchange notes that it would be difficult to exercise such discretion in periods of extraordinary market volatility and, in particular, when the price of the underlying security is unreliable. The Exchange again notes that the theoretical price in this context would be subjective.[9] Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting fair and orderly markets. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying these provisions during such unusual market conditions.

Additionally, the Exchange proposes to provide that trades would not be subject to review under Rule 1092(c)(ii)(E) during a Limit or Straddle State. Under Rule 1092(c)(ii)(E), a trade may be nullified or adjusted where an execution occurred in a series quoted no bid. The Exchange believes that these situations are not appropriate for an error review because they are more likely to result in a windfall to one party at the expense of another in a Limit State or Straddle State, because the criteria for meeting the no-bid provision are more likely to be met in a Limit State or Straddle State, and unlike normal circumstances, may not be a true reflection of the value of the series being quoted.

In response to these concerns, the Exchange proposes to adopt Rule 1047(f)(v) to provide that electronic trades are not subject to an obvious error or catastrophic error review pursuant to Rule 1092(a)(i) and (ii) and Rule 1092(c)(ii)(F) during a Limit State or Straddle State. In addition, the Exchange proposes to provide that electronic trades are not subject to review if, pursuant to Rule 1092(c)(ii)(E), the trade resulted in an execution in a series quoted no bid.

Finally, proposed Rule 1047(f)(v) also will include a qualification that nothing in proposed Rule 1047(f)(v) will prevent electronic trades from being reviewed on Exchange motion pursuant to Rule 1092(e)(i)(B). According to the Exchange, this safeguard will provide the flexibility to act when necessary and appropriate, while also providing market participants with certainty that trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review on Exchange motion electronic transactions that occur during a Limit State or Straddle State under this provision, according to the Exchange, would enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors.

III. Discussion

The Commission finds that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In the filing, the Exchange notes its belief that suspending certain aspects of Rule 1092 during a Limit State or Straddle State will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or

[8] Specifically, under Rule 1092(b), the theoretical price is determined in one of three ways: (i) If the series is traded on at least one other options exchange, the last National Best Bid price with respect to an erroneous sell transaction and the last National Best Offer price with respect to an erroneous buy transaction, just prior to the trade; (ii) as determined by an Options Exchange Official in its discretion, if there are no quotes for comparison purposes, or if the bid/ask differential of the NBBO for the affected series, just prior to the erroneous transaction, was at least two times the permitted bid/ask differential under the Exchange's rules; or (iii) for transactions occurring as part of the Exchange's automated opening system, the theoretical price shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

[9] The Exchange also notes that the determination of theoretical price under Rule 1092(b)(iii) applies to trades executed during openings. Because the Exchange does not intend to open an option during a Limit State or Straddle State, this provision will not apply.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange during Limit States and Straddle States, thus promoting fair and orderly markets.

The Exchange, however, has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. The Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude electronic trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Rule 1092(a)(i) or (ii) and the nullification or adjustment provisions pursuant to Rule 1092(c)(ii)(E) or (F). The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states that by rejecting market orders and stop orders, and cancelling pending market orders and stop orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Additionally, the Exchange notes the existence of SEC Rule 15c3–5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Finally, with respect to limit orders that will be executable during Limit States and Straddle States, the Exchange states that it applies price checks to limit orders that are priced sufficiently far through the NBBO. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

The Exchange also believes that the aspect of proposed rule change that will continue to allow the Exchange to review on its own motion electronic trades that occur during a Limit State or a Straddle State is consistent with the Act because it would provide flexibility for the Exchange to act when necessary and appropriate to nullify or adjust a transaction and will enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. The Exchange represents that it recognizes that this provision is limited and that it will administer the provision in a manner that is consistent with the principles of the Act. In addition, the Exchange represents that it will create and maintain records relating to the use of the authority to act on its own motion during a Limit State or Straddle State.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 5, 2013, the Exchange submitted a letter stating that it would provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.[12] This will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing

[12] In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Section 3(d)(iv), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) The options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: Stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. *See* Phlx Letter, *supra* note 4.

market participants additional time to review trades submitted during a Limit State or Straddle State.

Finally, the Commission notes that the Plan, to which these rules relate, will be implemented on April 8, 2013. Accordingly, for the reasons stated above, and in consideration of the April 8, 2013 implementation date of the Plan, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[13] for approving the Exchange's proposal prior to the 30th day after the publication of the notice in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–2013–29), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08612 Filed 4–11–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69340; File No. SR–NYSEArca–2013–10]

Self-Regulatory Organizations; NYSE Arca LLC; Order Approving, on an Accelerated Basis, Proposed Rule Change, as Modified by Amendment No. 1, Adopting New Exchange Rule 6.65A To Provide for How the Exchange Proposes To Treat Orders, Market-Making Quoting Obligations, and Errors in Response to the Regulation NMS Plan To Address Extraordinary Market Volatility; and Amending Exchange Rule 6.65 To Codify That the Exchange Shall Halt Trading in All Options Overlying NMS Stocks When the Equities Markets Initiate a Market-Wide Trading Halt Due to Extraordinary Market Volatility

April 8, 2013.

I. Introduction

On February 26, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to provide for how the Exchange proposes to treat orders, market-making quoting obligations, and errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility and to codify that the Exchange shall halt trading in all options overlying NMS stocks when the equities markets initiate a market-wide trading halt due to extraordinary market volatility. The proposed rule change was published for comment in the **Federal Register** on March 4, 2013.[4] On April 1, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change.[5] The Commission received one comment letters on the proposal.[6] This order approves the proposed rule change on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.[7] This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.[8] The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.[9]

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan[10] pursuant to Section 11A of the Act,[11] and Rule 608 thereunder,[12] which featured a ''limit up-limit down'' mechanism (as amended, the ''Limit Up-Limit Down Plan'' or ''Plan'').

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, i.e., the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors[13] are required to disseminate such National Best Bid or National Best Offer[14] with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable

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[13] 15 U.S.C. 78s(b)(2). The Commission noticed substantially similar rules proposed by NYSE MKT LLC and NYSE Arca, Inc. with a full 21 day comment period. *See* Securities Exchange Act Release No. 69033, 78 FR 15067 (March 8, 2013) and Securities Exchange Act Release No. 69032, 78 FR 15080 (March 8, 2013).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 69032, 78 FR 15080 (March 8, 2013).

[5] In Amendment No. 1, the Exchange expanded upon its rationale for its proposed changes regarding the nullification and adjustment of options transactions, agreed to provide the Commission with relevant data to assess the impact of the proposal, and clarified the length of the pilot period related to such changes. Because the changes made in Amendment No. 1 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

[6] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, Executive Vice President and Corporate Secretary, General Counsel, NYSE Markets, dated April 5, 2013 (''NYSE Letter'').

[7] The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission. *See* Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf.*

[8] For further discussion on the development of the single-stock circuit breaker pilot program, *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (''Limit Up-Limit Down Plan'' or ''Plan'').

[9] *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033) (describing the ''second stage'' of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the ''third stage'' of the single-stock circuit breaker pilot).

[10] NYSE Euronext filed on behalf of New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (''NYSE MKT''). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR–NYSEAmex–2012–32).

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 242.608.

[13] As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. *See id.*

[14] ''National Best Bid'' and ''National Best Offer'' has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. *See id.*

price band, i.e., the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, i.e., the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.[15]

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.[16] The first phase of the Plan shall be implemented beginning April 8, 2013.[17]

[15] As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

[16] *See* ''Limit Up-Limit Down Plan,'' *supra* note 8. *See also* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

[17] *See* ''Second Amendment to Limit Up-Limit Down Plan,'' *supra* note 16.

III. Description of the Proposal

1. Treatment of Market and Stop Orders

The Exchange proposes to adopt new Exchange Rule 6.65A to provide for how the Exchange shall treat orders and quotes in options overlying NMS stocks if the underlying NMS stock is in a Limit State and Straddle State. Specifically, the Exchange proposes that if the underlying NMS stock is in a Limit State or Straddle State, the Exchange shall reject all incoming Market Orders and will not elect Stop Orders.[18] According to the Exchange, when the underlying enters a Limit or Straddle State, there may not be a reliable underlying reference price, there may be a wide bid/ask quotation differential in the option, and there may be less liquidity in the options markets. For these reasons, the Exchange stated that permitting these order types to execute when the underlying NMS stock is in a Limit or Straddle State could lead to executions at prices that may inferior to the NBBO immediately before the underlying entered the Limit or Straddle State, and could add to volatility in the options markets during times of extraordinary market volatility.

2. Specialist and Market Maker Quoting Obligations

The Exchange also proposes to modify its rules governing quoting obligations for Lead Market Makers and Market Makers. Specifically, the Exchange will provide that, when evaluating whether a Lead Market Maker has met its market-making quoting requirement pursuant to Rule 6.37B(b) or a Market Maker has met its market-making quoting requirement pursuant to Rule 6.37B(c) in options overlying NMS stocks, the Exchange shall consider as a mitigating circumstance the frequency and duration of occurrences when an underlying NMS stock is in a Limit State or a Straddle State. For example, if a Market Maker failed to meet its monthly quoting obligations, and during the review, it was determined that the quoting that failed to meet the obligation was for options on NMS stocks with a significant number of Straddle States and Limit States, then that would be considered a mitigating circumstance that would entitle that Market Maker to relief.

The Exchange represented that this change is necessary given the direct relationship between the price of an option and the price of the underlying security, which may affect the quoting behavior of Lead Market Makers and Market Makers. For example, when the underlying is in a Limit or Straddle State, the ability of a Lead Market Maker or Market Maker to hedge an options position may be impaired, and they modify their quoting behavior accordingly. The Exchange also stated that this aspect of its proposal would facilitate transactions and preserve market liquidity.

3. Declaration of Trading Halts

The Exchange also proposes to amend Rule 6.65 to provide that the Exchange would halt trading in all options whenever the equities markets halt trading in all NMS stocks due to extraordinary market volatility, i.e., when a market-wide circuit breaker is triggered.[19] As part of this proposal, the Exchange will also delete Rule 7.5, which restates the equities rule regarding market-wide trading halts without reference to halting trading in options. The Exchange noted that this provision, which explicitly provides for a trading halt when the equities market is halted due to the market-wide circuit breaker, is similar to a rule recently amended by CBOE.[20] The Exchange also represented that the remaining provisions in existing Rule 6.65 regarding Trading Halts and Suspensions remain unchanged and provide a means to halt or suspend trading in options contracts whenever the Exchange deems such action appropriate in the interests of a fair and orderly market and to protect investors.

In addition, the Exchange is proposing to add Commentary .05 to provide that reopening of trading following a trading halt under this Rule shall be conducted pursuant to procedures adopted by the Exchange and communicated by notice to its OTP Holders and OTP Firms. The Exchange represented that this Commentary is nearly identical to that found in CBOE

[18] *See* Rule 6.62(d)(1). Stop Orders when elected create a Market Order to buy or sell the option. In contrast, the Exchange is not proposing to prohibit the election of Stop Limit Orders. Stop Limit Orders when elected create a Limit Order to buy or sell the option at a specific price. *See* Rule 6.62(d)(2). The Exchange stated that Stop Limit Orders do not raise the same risks during periods of extraordinary volatility, because once elected the associated limit orders would not race through the order book in the manner that an elected Market Order would.

[19] Market-wide circuit breakers in the equities market are different than a trading halt during a Trading Pause in the underlying pursuant to the LULD Plan. Market-wide circuit breakers for equities are currently covered by NYSE Arca Equities Rule 7.12. *See* NYSE Arca Equities Rule 7.12. The Exchange's Rule regarding trading pauses (also known as ''single stock circuit breakers'') is found in Rule 6.65(b) for options and NYSE Arca Equities Rule 7.11(b) for equities.

[20] *See* CBOE Rule 6.3B.

Rule 6.3B and current Commentary .03 to Exchange Rule 7.5.[21]

4. Obvious Error

In connection with the implementation of the Plan, the Exchange proposes to adopt new Rule 6.65A(c) to exclude electronic transactions in stock options that overlay an NMS stock that occur during a Limit State or Straddle State from the provisions of Rule 6.87(a) for Obvious Errors or Rule 6.87(d) for Catastrophic Errors. Additionally, the Exchange proposes to retain the ability to review electronic transactions that occur during a Limit State or Straddle State by Exchange motion pursuant to Rule 6.87(b)(3).[22]

Rule 6.87 provides a process by which a transaction may be nullified or adjusted when the execution price of a transaction deviates from the option's theoretical price by a certain amount. Generally, the theoretical price of an option is the National Best Bid and Offer (''NBBO'') of the option. In certain circumstances, Trading Officials have the discretion to determine the theoretical price.[23]

The Exchange believes maintaining the current operation of Rules 6.87(a) and 6.87(d) during a Limit State or Straddle State would be undesirable. According to the Exchange, during periods of extraordinary volatility, the review period [24] for transactions under the Obvious Error and Catastrophic Error provisions would allow market participants to re-evaluate a transaction that occurred during a Limit State or Straddle State at a later time, which is potentially unfair to other market participants and would discourage market participants from providing liquidity during Limit States or Straddle States. The Exchange believes that market participants should not be able to benefit from the time frame to review their transactions in these situations.

The Exchange also noted that, barring this proposed rule change, the provisions of Rule 6.87(a)(2)(B) and 6.87(d)(2)(B) [25] would likely apply in many instances during Limit or Straddle States. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical value should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. The Exchange notes that the theoretical price in this context would be subjective. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting fair and orderly markets.

In Amendment No. 1, the Exchange also noted that application of current Rules 6.87(a) and 6.87(d) would be unreliable during a Limit State or Straddle State. The Exchange believes that application of Rules 6.87(a) and 6.87(d) to electronic transactions occurring during a Limit or Straddle State would be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States and that the resulting actions may not be appropriate given market conditions. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying Rules 6.87(a) and 6.87(d) during such unusual market conditions.

In response to these concerns, the Exchange proposes to adopt Rule 6.65A(c) to provide that electronic transactions are not subject to an obvious error or catastrophic error review pursuant to Rules 6.87(a) and 6.87(d) during a Limit State or Straddle State. Proposed Rule 6.65A(c) will also include a qualification that nothing in the proposed rule change will prevent electronic trades from being reviewed on Exchange motion pursuant to Rule 6.87(b)(3).[26] According to the Exchange, this safeguard will provide the flexibility to act when necessary and appropriate, while also providing market participants with certainty that trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review on Exchange motion electronic transactions that occur during a Limit State or Straddle State under this provision, according to the Exchange, would enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors.

The Exchange also noted that its existing order protections that reject limit orders that are priced too far through the NBBO would continue to apply during Limit and Straddle States. Additionally, the Exchange notes that while in Limit States and Straddle States, only limit orders will be accepted, affirming that the participant is willing to accept an execution up to the limit price. Further, according to the Exchange, the Exchange system will only trade through the theoretical bid or offer if the Exchange or the participant (via an ISO order) has accessed all better priced interest away in accordance with the Options Order Protection and Locked/Crossed Markets Plan. The Exchange believes potential trade reviews of executions that occurred at the participant's limit price in compliance with the aforementioned

[21] *See* CBOE Rule 6.3B.

[22] Rule 6.87(b)(3) provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the Chief Executive Officer of NYSE Arca, Inc. (''CEO'') or designee thereof, who is an officer of the Exchange (collectively ''Exchange officer''), may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous. A transaction reviewed pursuant to this provision may be nullified or adjusted only if it is determined by the Exchange officer that the transaction is erroneous as provided in Rules 6.87(a)(3), (a)(4), (a)(5) or (a)(6). A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The Exchange officer may be assisted by a Trading Official in reviewing a transaction. In addition, the Exchange officer shall act pursuant to Rule 6.87(b)(3) as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. In no event shall the Exchange officer act later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question. An OTP Holder affected by a determination to nullify or adjust a transaction pursuant to this paragraph (3) may appeal such determination in accordance with Rule 6.87(c); however, a determination by an Exchange officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. If a transaction is reviewed and a determination is rendered pursuant to Rules 6.87(a)(3), (a)(4), (a)(5) or (a)(6), no additional relief may be granted under this provision.

[23] Specifically, under Rules 6.87(a)(2) and 6.87(d)(2), the theoretical price is determined in one of two ways: (i) If the series is traded on at least one other options exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, that comprise the NBBO as disseminated by the Options Price Reporting Authority; or (ii) as determined by a designated Trading Official, if there are not quotes for comparison purposes, or if the bid/ask differential of the national best bid and offer for the affected series just prior to the erroneous transaction was at least two times the permitted bid/ask differential pursuant to Rule 6.37(b)(1)(A)–(E).

[24] Pursuant to Rule 6.87(b), market participants may have up to 20 minutes to notify the Exchange of a transaction that may be an Obvious Error. Pursuant to Rule 6.87(d), market participants may have up to 8:30 a.m. ET on the first trading day following a transaction to review it as a Catastrophic Error.

[25] These provisions give the Exchange Trading Official the discretion to determine the theoretical price of an option for purposes of analyzing whether a transaction qualifies for nullification or adjustment under Rule 6.87.

[26] The Exchange stated that it received informal feedback from a number of market participants, including liquidity providers and order flow providers, that has generally been supportive of the Exchange's proposed rule change.

Plan could harm liquidity and also create an advantage to either side of an execution depending on the future movement of the underlying stock.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[28] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulation, 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.

With respect to the proposal to reject market orders and to not elect Stop Orders when the underlying is in a Limit or Straddle State, the Exchange stated that permitting these order types to execute during these times could contribute to market volatility and could have the potential to lead to poor executions, as spreads in the options markets might have widened in response to the underlying entering a Limit or Straddle State. The Commission believes that rejecting market orders and not electing Stop Orders during these times will provide certainty to the treatment of Market Orders and Stop Orders during these times. To the extent that the spreads in the options market may widen as a result of the underlying entering a Limit or Straddle State, this proposal may also prevent market and Stop Orders from receiving executions at unintended prices during these times.

With respect to deeming the frequency and duration with which the underlying security is in a Limit or Straddle State a mitigating circumstance when evaluating the adherence of Specialists and Market Makers to their respective quoting obligations, the Commission believes that this proposal represents an appropriate response to the potential effect on the options markets of the underlying entering a Limit or Straddle State. During a limit up-limit down state, there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's proposal in these limited circumstances is consistent with the Act.

The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring this amendment to its rules and determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

The Commission also believes that the proposal to halt trading in the options market when trading in the equities markets has been halted as a result of the market-wide circuit breaker being triggered, the provision addressing re-opening of trading following such a halt, and the corresponding deletion of Rule 7.5, is consistent with the Act. The proposal to halt trading as a result of the underlying triggering a market-wide circuit breaker is reasonably designed to ensure that the Exchange halts trading in all options whenever the equities markets initiate a trading halt as a result of the market-wide circuit breaker, thereby minimizing volatility in the options markets. This provision is also similar to a corresponding CBOE rule. Rule 7.5 restates the equities rule regarding market-wide trading halts without reference to halting trading in options, and the adoption of Rule 6.65(e) should address how the exchange handles trading in response to the market-wide circuit breaker being triggered in the equities markets. Finally, the provision addressing re-opening of trading following such a halt is substantively similar to CBOE Rule 6.3B, and the commentary contained in Rule 7.5.

The Commission finds that the Exchange's proposal to suspend certain aspects of Rule 6.87 during a Limit State or Straddle State is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[29] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[30] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In Amendment No. 1, the Exchange notes its belief that suspending certain aspects of Rule 6.87 during a Limit State or Straddle State will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange states that it believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange during Limit States and Straddle States, thus promoting fair and orderly markets.

The Exchange, however, has proposed this rule change based on its

[27] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b).

[29] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78f(b)(5).

expectations about the quality of the options market during Limit States and Straddle States. In Amendment No. 1, the Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Rules 6.87(a) or 6.87(d). The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states that by rejecting market orders and stop orders, and cancelling pending market orders and stop orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Additionally, the Exchange notes the existence of SEC Rule 15c3–5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Finally, with respect to limit orders that will be executable during Limit States and Straddle States, the Exchange states that it applies price checks to limit orders that are priced sufficiently far through the NBBO. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

The Exchange also believes that the aspect of the proposed rule change that will continue to allow the Exchange to review on its own motion electronic trades that occur during a Limit State or a Straddle State is consistent with the Act because it would provide flexibility for the Exchange to act when necessary and appropriate to nullify or adjust a transaction and will enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. In Amendment No. 1, the Exchange represents that it recognizes that this provision is limited and that it will administer the provision in a manner that is consistent with the principles of the Act. In addition, the Exchange represents that it will create and maintain records relating to the use of the authority to act on its own motion during a Limit State or Straddle State.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, pursuant to Amendment No. 1, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide to the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 5, 2013, NYSE Euronext submitted a letter on behalf of the Exchange, stating that the Exchange will provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.[31] This will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act[32] for approving the proposed rule change on an accelerated basis. This proposal is related to the Plan, which will become operative on April 8, 2013, and aspects of the proposal, such as rejecting market orders and not electing Stop Orders during the Limit and Straddle States, are designed to

[31] In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Rule 6.65A(c), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) The options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. *See* NYSE Letter, *supra* note 6.

[32] 15 U.S.C. 78s(b)(2)

prevent such orders from receiving poor executions during those times.[33] In granting accelerated approval, the proposed rule change, and any attendant benefits, will take effect upon the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [34] that the proposed rule change (SR–NYSEArca–2013–10) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08604 Filed 4–11–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69332; File No. SR–Phlx–2013–21]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving, on an Accelerated Basis, Proposed Rule Change To Adopt New Exchange Rule 1047(f)(iv) Regarding Quoting Obligations

April 5, 2013.

I. Introduction

On March 5, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to adopt new Exchange Rule 1047(f)(iv) regarding quoting obligations. The proposed rule change was published for comment in the **Federal Register** on March 13, 2013.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.[5] This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.[6] The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.[7]

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan [8] pursuant to Section 11A of the Act,[9] and Rule 608 thereunder,[10] which featured a ''limit up-limit down'' mechanism (as amended, the ''Limit Up-Limit Down Plan'' or ''Plan'').

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, i.e., the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors [11] are required to disseminate such National Best Bid or National Best Offer [12] with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price band, i.e., the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, i.e., the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.[13]

[33] *See supra* note 17.

[34] 15 U.S.C. 78f(b)(2).

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b-4.

[4] *See* Securities Exchange Act Release No. 69068 (March 7, 2013), 78 FR 16001.

[5] The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission. *See* Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf.*

[6] For further discussion on the development of the single-stock circuit breaker pilot program, *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (''Limit Up-Limit Down Plan'' or ''Plan'').

[7] *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033) (describing the ''second stage'' of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the ''third stage'' of the single-stock circuit breaker pilot).

[8] NYSE Euronext filed on behalf of New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (''NYSE MKT''). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR–NYSEAmex–2012–32).

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. *See id.*

[12] ''National Best Bid'' and ''National Best Offer'' has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. *See id.*

[13] As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable

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On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.[14] The first phase of the Plan shall be implemented beginning April 8, 2013.[15]

III. Description of the Proposal

In light of and in connection with the Limit Up-Limit Down Plan, the Exchange is adopting Rule 1047(f)(iv) to provide that the Exchange shall exclude the amount of time an NMS stock underlying a Phlx option is in a Limit State or Straddle State from the total amount of time in the trading day when calculating the percentage of the trading day specialists and Registered Options Traders (''ROTs'') are required to quote.

Currently, under Rule 1014(b)(ii)(D)(1) and (2), Phlx requires: (i) that a Streaming Quote Trader (''SQT'') and a Remote Streaming Quote Trader (''RQST'') to be responsible for quoting two-sided markets in not less than 60% of the series in which such SQT or RSQT is assigned; (ii) a Directed SQT (''DSQT'') or a Directed DRSQT (''DRSQT'') to be responsible for quoting two-sided markets in the lesser of 99% of the series listed on the Exchange or 100% of the series listed on the Exchange minus one call-put pair, in each case in at least 60% of the options in which such DSQT or DRSQT is assigned; and (iii) the specialist (including the RSQT functioning as a Remote Specialist in particular options) shall be responsible to quote two-sided markets in the less of 99% of the series on 100% of the series minus one call-put pair in each option in which such specialist is assigned. To satisfy these requirements, specialists and ROTs must quote such series 90% of the trading day as a percentage of the total number of minutes in such trading day.

The Exchange's proposal would suspend specialists' and ROTs' continuous quoting obligation for the duration that an underlying NMS stock is in a Limit State or a Straddle State. As a result, when calculating the duration necessary for a specialist or ROT to meet its obligations that it post valid quotes at least 90% of the time the classes are open for trading, that time will not include the duration that the underlying is in a Limit State or Straddle State.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to suspend a Market Maker's obligations when the underlying security is in a limit up-limit down state is consistent with the Act. During a limit up-limit down state, there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's decision to suspend a Market Maker's obligations in these limited circumstances is consistent with the Act.

The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring the quoting requirements that are being amended in this proposed rule change and determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

The Commission also notes that the Exchange did not propose to waive its bid-ask spread requirements for market makers when the underlying is in a Limit or Straddle State. The Commission believes that retaining this requirement should help ensure the quality of the quotes that are entered and preserves one of the obligations of being a market maker.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act [18] for approving the proposed rule change on an accelerated basis. The proposal is related to the Plan, which will become operative on April 8, 2013.[19] Without accelerated approval, the proposed rule change, and any attendant benefits, would take effect after the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [20] that the proposed rule change (SR–Phlx–2013–21) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

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policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

[14] *See* ''Limit Up-Limit Down Plan,'' *supra* note 6. *See also* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y- Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

[15] *See* ''Second Amendment to Limit Up-Limit Down Plan,'' *supra* note 14.

[16] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78s(b)(2)

[19] *See supra* note 15.

[20] 15 U.S.C. 78f(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69339; File No. SR–NYSEMKT–2013–10]

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving, on an Accelerated Basis, Proposed Rule Change, as Modified by Amendment No. 1, Adopting Exchange Rule 953.1NY To Provide for How the Exchange Proposes To Treat Orders, Market-Making Quoting Obligations, and Errors in Response to the Regulation NMS Plan To Address Extraordinary Market Volatility; and Amending Exchange Rule 953NY To Codify That the Exchange Shall Halt Trading in All Options Overlying NMS Stocks When the Equities Markets Initiate a Market-Wide Trading Halt Due to Extraordinary Market Volatility

April 8, 2013.

I. Introduction

On February 26, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to provide for how the Exchange proposes to treat orders, market-making quoting obligations, and errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility and to codify that the Exchange shall halt trading in all options overlying NMS stocks when the equities markets initiate a market-wide trading halt due to extraordinary market volatility. The proposed rule change was published for comment in the **Federal Register** on March 4, 2013.[4] On April 1, the Exchange submitted Amendment No. 1 to the proposed rule change.[5] The Commission received one comment letter on the proposal.[6] This order approves the proposed rule change on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.[7] This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.[8] The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.[9]

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan [10] pursuant to Section 11A of the Act,[11] and Rule 608 thereunder,[12] which featured a ''limit up-limit down'' mechanism (as amended, the ''Limit Up-Limit Down Plan'' or ''Plan'').

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, i.e., the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors [13] are required to disseminate such National Best Bid or National Best Offer [14] with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price band, i.e., the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, i.e., the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.[15]

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 69033, 78 FR 15067 (March 8, 2013).

[5] In Amendment No. 1, the Exchange expanded upon its rationale for its proposed changes regarding the nullification and adjustment of options transactions, agreed to provide the Commission with relevant data to assess the impact of the proposal, and clarified the length of the pilot period related to such changes. Because the changes made in Amendment No. 1 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

[6] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, Executive Vice President and Corporate Secretary, General Counsel, NYSE Markets, dated April 5, 2013 (''NYSE Letter'').

[7] The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission. *See* Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf*.

[8] For further discussion on the development of the single-stock circuit breaker pilot program, *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (''Limit Up-Limit Down Plan'' or ''Plan'').

[9] *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033) (describing the ''second stage'' of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the ''third stage'' of the single-stock circuit breaker pilot).

[10] NYSE Euronext filed on behalf of New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (''NYSE MKT''). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR–NYSEAmex–2012–32).

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 242.608.

[13] As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. *See id.*

[14] ''National Best Bid'' and ''National Best Offer'' has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. *See id.*

[15] As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and

Continued

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.[16] The first phase of the Plan shall be implemented beginning April 8, 2013.[17]

III. Description of the Proposal

1. Treatment of Market and Stop Orders

The Exchange proposes to adopt new Exchange Rule 953.1NY to provide for how the Exchange shall treat orders and quotes in options overlying NMS if the underlying NMS stock is in a Limit State and Straddle State. Specifically, the Exchange proposes that if the underlying NMS stock is in a Limit State or Straddle State, the Exchange shall reject all incoming Market Orders and will not elect Stop Orders.[18] According to the Exchange, when the underlying enters a Limit or Straddle State, there may not be a reliable underlying reference price, there may be a wide bid/ask quotation differential in the option, and there may be less liquidity in the options markets. For these reasons, the Exchange stated that permitting these order types to execute when the underlying NMS stock is in a Limit or Straddle State could lead to executions at prices that may inferior to the NBBO immediately before the underlying entered the Limit or Straddle State, and could add to volatility in the options markets during times of extraordinary market volatility.

2. Specialist and Market Maker Quoting Obligations

The Exchange also proposes to modify its rules governing quoting obligations for Specialists and Market Makers. Specifically, the Exchange will provide that, when evaluating whether a Specialist has met its market-making quoting requirement pursuant to Rule 925.1NY(b) or a Market Maker has met its market-making quoting requirement pursuant to Rule 925.1NY(c) in options overlying NMS stocks, the Exchange shall consider as a mitigating circumstance the frequency and duration of occurrences when an underlying NMS stock is in a Limit State or a Straddle State. For example, if a Market Maker failed to meet its monthly quoting obligations, and during the review, it was determined that the quoting that failed to meet the obligation was for options on NMS stocks with a significant number of Straddle States and Limit States, then pursuant to proposed Rule 953.1NY(c), that would be considered a mitigating circumstance that would entitle that Market Maker to relief.

The Exchange represented that this change is necessary given the direct relationship between the price of an option and the price of the underlying security, which may affect the quoting behavior of Specialists and Market Makers. For example, when the underlying is in a Limit or Straddle State, the ability of a Specialist or Market Maker to hedge an options position may be impaired, and they modify their quoting behavior accordingly. The Exchange also stated that this aspect of its proposal would facilitate transactions and preserve market liquidity.

3. Declaration of Trading Halts

The Exchange also proposes to amend Rule 953NY so that the Exchange would halt trading in all options whenever the equities markets halt trading in all NMS stocks due to extraordinary market volatility, i.e., when a market-wide circuit breaker is triggered.[19] The Exchange noted that this provision, which explicitly provides for a trading halt when the equities market is halted due to the market-wide circuit breaker, is similar to a rule recently amended by CBOE.[20] The Exchange also represented that the remaining provisions in existing Rule 953NY regarding Trading Halts and Suspensions remain unchanged and provide a means to halt or suspend trading in options contracts whenever the Exchange deems such action appropriate in the interests of a fair and orderly market and to protect investors.

In addition, the Exchange is proposing to add Commentary .05 to provide that reopening of trading following a trading halt under this Rule shall be conducted pursuant to procedures adopted by the Exchange and communicated by notice to its ATP Holders and ATP Firms. The Exchange represented this Commentary is similar to that found in CBOE Rule 6.3B, and nearly identical to Commentary .03 to NYSE Arca Options Rule 7.5.[21]

4. Obvious Error

In connection with the implementation of the Plan, the Exchange proposes to adopt new Rule 953.1NY(c) to exclude electronic transactions in stock options that overlay an NMS stock that occur during a Limit State or Straddle State from the provisions of Rule 975NY(a) for Obvious Errors or Rule 975NY(d) for Catastrophic Errors. Additionally, the Exchange proposes to retain the ability to review electronic transactions that occur during a Limit State or Straddle State by Exchange motion pursuant to Rule 975NY(b)(3).[22]

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bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

[16] *See* ''Limit Up-Limit Down Plan,'' *supra* note 8. *See also* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

[17] *See* ''Second Amendment to Limit Up-Limit Down Plan,'' *supra* note 16.

[18] *See* Rule 900.3NY(d)(1). Stop Orders when elected create a Market Order to buy or sell the option. In contrast, the Exchange is not proposing to prohibit the election of Stop Limit Orders. Stop Limit Orders when elected create a Limit Order to buy or sell the option at a specific price. *See* 900.3NY(d)(2). The Exchange represented that Stop Limit Orders do not raise the same risks during periods of extraordinary volatility, because once elected the associated limit orders would not race through the order book in the manner that an elected Market Order would.

[19] Market-wide circuit breakers in the equities market are different than a trading halt during a Trading Pause in the underlying pursuant to the LULD Plan. Market-wide circuit breakers for equities are currently covered by NYSE MKT Rule 80B—Equities. *See* NYSE MKT Rule 80B—Equities. The Exchange's Rule regarding trading pauses (also known as ''single stock circuit breakers'') is found in Rule 953NY(b) for options and NYSE MKT Rule 80C(b)—Equities for equities.

[20] *See* CBOE Rule 6.3B.

[21] *See* CBOE Rule 6.3B and NYSE Arca Options Rule 7.5.

[22] Rule 975NY(b)(3) provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the Exchange's Chief Executive Officer (''CEO'') or designee thereof, who is an officer of the Exchange (collectively ''Exchange officer''), may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous. A transaction reviewed pursuant to this provision may be nullified or adjusted only if it is determined by the Exchange officer that the transaction is erroneous as provided in Rule 975NY(a)(3), (a)(4), (a)(5) or (a)(6). A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The Exchange officer may be assisted by a Trading Official in reviewing a transaction. In addition, the Exchange officer shall act pursuant to 975NY(b)(3) as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. In no event shall the Exchange officer act later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question. An ATP Holder affected by a determination to nullify or adjust a transaction pursuant to this paragraph (3) may appeal such determination in accordance with Rule 975NY(c); however, a determination by an Exchange officer not to review a transaction, or a determination not to nullify or adjust a transaction

Rule 975NY provides a process by which a transaction may be nullified or adjusted when the execution price of a transaction deviates from the option's theoretical price by a certain amount. Generally, the theoretical price of an option is the National Best Bid and Offer (''NBBO'') of the option. In certain circumstances, Trading Officials have the discretion to determine the theoretical price.[23]

The Exchange believes maintaining the current operation of Rules 975NY(a)(1) and 975NY(d)(1) during a Limit State or Straddle State would be undesirable. According to the Exchange, during periods of extraordinary volatility, the review period [24] for transactions under the Obvious Error and Catastrophic Error provisions would allow market participants to re-evaluate a transaction that occurred during a Limit State or Straddle State at a later time, which is potentially unfair to other market participants and would discourage market participants from providing liquidity during Limit States or Straddle States. The Exchange believes that market participants should not be able to benefit from the time frame to review their transactions in these situations.

The Exchange also noted that, barring this proposed rule change, the provisions of Rules 975NY(a)(2)(B) and 975NY(d)(2)(B) [25] would likely apply in many instances during Limit or Straddle States. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical value should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. The Exchange notes that the theoretical price in this context would be subjective. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting fair and orderly markets.

In Amendment No. 1, the Exchange also noted that application of current Rules 975NY(a) and 975NY(d) would be unreliable during a Limit State or Straddle State. The Exchange believes that application of Rules 975NY(a) and 975NY(d) to electronic transactions occurring during a Limit or Straddle State would be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States and that the resulting actions may not be appropriate given market conditions. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying Rules 975NY(a) and 975NY(d) during such unusual market conditions.

In response to these concerns, the Exchange proposes to adopt Rule 953.1NY(c) to provide that electronic transactions are not subject to an obvious error or catastrophic error review pursuant to Rules 975NY(a) and 975NY(d) during a Limit State or Straddle State.

Proposed Rule 953.1NY(c) will also include a qualification that nothing in the proposed rule change will prevent electronic trades from being reviewed on Exchange motion pursuant to Rule 975NY(b)(3).[26] According to the Exchange, this safeguard will provide the flexibility to act when necessary and appropriate, while also providing market participants with certainty that trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review on Exchange motion electronic transactions that occur during a Limit State or Straddle State under this provision, according to the Exchange, would enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors.

The Exchange also noted that its existing order protections that reject limit orders that are priced too far through the NBBO would continue to apply during Limit and Straddle States. Additionally, the Exchange notes that while in Limit States and Straddle States, only limit orders will be accepted, affirming that the participant is willing to accept an execution up to the limit price. Further, according to the Exchange, the Exchange system will only trade through the theoretical bid or offer if the Exchange or the participant (via an ISO order) has accessed all better priced interest away in accordance with the Options Order Protection and Locked/Crossed Markets Plan. The Exchange believes potential trade reviews of executions that occurred at the participant's limit price in compliance with the aforementioned Plan could harm liquidity and also create an advantage to either side of an execution depending on the future movement of the underlying stock.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[28] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulation, 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.

With respect to the proposal to reject market orders and to not elect Stop Orders when the underlying is in a

for which a review was requested or conducted, is not appealable. If a transaction is reviewed and a determination is rendered pursuant to Rules 975NY(a)(3), (a)(4), (a)(5) or (a)(6), no additional relief may be granted under this provision.

[23] Specifically, under Rules 975NY(a)(2) and 975NY(d)(2), the theoretical price is determined in one of two ways: (i) If the series is traded on at least one other options exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, that comprise the NBBO as disseminated by the Options Price Reporting Authority; or (ii) as determined by a designated Trading Official, if there are not quotes for comparison purposes, or if the bid/ask differential of the NBBO for the affected series just prior to the erroneous transaction was at least two times the permitted bid/ask differential pursuant to Rule 925NY(b)(4).

[24] Pursuant to Rule 975NY(b), market participants may have up to 20 minutes to notify the Exchange of a transaction that may be an Obvious Error. Pursuant to Rule 975NY(d), market participants may have up to 8:30 a.m. ET on the first trading day following a transaction to review it as a Catastrophic Error.

[25] These provisions give the Exchange Trading Official the discretion to determine the theoretical price of an option for purposes of analyzing whether a transaction qualifies for nullification or adjustment under Rule 975NY.

[26] The Exchange stated that it received informal feedback from a number of market participants, including liquidity providers and order flow providers, that has generally been supportive of the Exchange's proposed rule change.

[27] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b).

Limit or Straddle State, the Exchange stated that permitting these order types to execute during these times could contribute to market volatility and could have the potential to lead to poor executions, as spreads in the options markets might have widened in response to the underlying entering a Limit or Straddle State. The Commission believes that rejecting market orders and not electing Stop Orders during these times will provide certainty to the treatment of Market Orders and Stop Orders during these times. To the extent that the spreads in the options market may widen as a result of the underlying entering a Limit or Straddle State, this proposal may also prevent market and Stop Orders from receiving executions at unintended prices during these times.

With respect to deeming the frequency and duration with which the underlying security is in a Limit or Straddle State a mitigating circumstance when evaluating the adherence of Specialists and Market Makers to their respective quoting obligations, the Commission finds that this proposal represents an appropriate response to the potential effect on the options markets of the underlying entering a Limit or Straddle State. During a limit up-limit down state, there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's proposal in these limited circumstances is consistent with the Act.

The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring this amendment to its rules and determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

The Commission also believes that the proposal to halt trading in the options market when trading in the equities markets has been halted as a result of the market-wide circuit breaker being triggered is consistent with the Act. This proposal is reasonably designed to ensure that the Exchange halts trading in all options whenever the equities markets initiate a trading halt as a result of the market-wide circuit breaker, thereby minimizing volatility in the options markets. This provision is also similar to a corresponding CBOE rule. The provision addressing re-opening of trading following such a halt is substantively similar to both CBOE Rule 6.3B, and the commentary contained in NYSE Arca Rule 7.5.

The Commission finds that the Exchange's proposal to suspend certain aspects of Rule 975NY during a Limit State or Straddle State is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[29] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[30] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In Amendment No. 1, the Exchange notes its belief that suspending certain aspects of Rule 975NY during a Limit State or Straddle State will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange states that it believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange during Limit States and Straddle States, thus promoting fair and orderly markets.

The Commission notes, however, that the Exchange has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. In Amendment No. 1, the Exchange stated, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Rules 975NY(a) or 975NY(d). The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states that by rejecting market orders and stop orders, and cancelling pending market orders and stop orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Additionally, the

[29] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78f(b)(5).

Exchange notes the existence of SEC Rule 15c3–5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Finally, with respect to limit orders that will be executable during Limit States and Straddle States, the Exchange states that it applies price checks to limit orders that are priced sufficiently far through the NBBO. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

The Exchange also believes that the aspect of the proposed rule change that will continue to allow the Exchange to review on its own motion electronic trades that occur during a Limit State or a Straddle State is consistent with the Act because it would provide flexibility for the Exchange to act when necessary and appropriate to nullify or adjust a transaction and will enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. In Amendment No. 1, the Exchange represents that it recognizes that this provision is limited and that it will administer the provision in a manner that is consistent with the principles of the Act. In addition, the Exchange represents that it will create and maintain records relating to the use of the authority to act on its own motion during a Limit State or Straddle State.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, pursuant to Amendment No. 1, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide to the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 5, 2013, NYSE Euronext submitted a letter on behalf of the Exchange, stating that the Exchange will provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.[31] This will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act[32] for approving the proposed rule change on an accelerated basis. This proposal is related to the Plan, which will become operative on April 8, 2013, and aspects of the proposal, such as rejecting market orders and not electing Stop Orders during the Limit and Straddle States, are designed to prevent such orders from receiving poor executions during those times.[33] In granting accelerated approval, the proposed rule change, and any attendant benefits, will take effect upon the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[34] that the proposed rule change (SR–NYSEMKT–2013–10) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08609 Filed 4–11–13; 8:45 am]

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[31] In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Rule 953.1NY(c), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) The options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: Stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. *See* NYSE Letter, *supra* note 5.

[32] 15 U.S.C. 78s(b)(2)

[33] *See supra* note 17.

[34] 15 U.S.C. 78f(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69331; File No. SR–BATS–2013–016]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving, on an Accelerated Basis, Proposed Rule Change To Modify the BATS Options Market Maker Obligation Rule

April 5, 2013.

I. Introduction

On March 1, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b-4 thereunder,[3] a proposed rule change to modify the BATS Options Market (''BATS Options'') Market Maker

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

obligation rule. The proposed rule change was published for comment in the **Federal Register** on March 12, 2013.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.[5] This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.[6] The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.[7]

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan [8] pursuant to Section 11A of the Act,[9] and Rule 608 thereunder,[10] which featured a ''limit up-limit down'' mechanism (as amended, the ''Limit Up-Limit Down Plan'' or ''Plan'').

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, i.e., the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors [11] are required to disseminate such National Best Bid or National Best Offer [12] with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price band, i.e., the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, i.e., the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.[13]

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.[14] The first phase of the Plan shall be implemented beginning April 8, 2013.[15]

III. Description of the Proposal

In light of and in connection with the Limit Up-Limit Down Plan, BATS is amending Rule 22.6(d) to suspend the obligation of Market Makers registered with BATS Options to enter continuous bids and offers during a halt, suspension, or pause in trading of the underlying security.

Currently, under Rule 22.6(d), BATS Options requires Market Makers to enter continuous bids and offers for the options series to which it is registered in at least 75% of the options series in which the Market Maker is registered. The Exchange's proposal would suspend a Market Maker's continuous quoting obligation for the duration that an underlying NMS stock is in a Limit State or a Straddle State. The Exchange's proposal would also suspend those obligations during a trading halt, suspension, or pause (collectively, a ''Trading Halt'') in the underlying security. Following a trading halt, the market maker's quoting obligations would only resume following the first regular-way transaction on the primary listing market in the underlying security.

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[4] *See* Securities Exchange Act Release No. 69038 (March 5, 2013), 78 FR 15773.

[5] The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission. *See* Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf*.

[6] For further discussion on the development of the single-stock circuit breaker pilot program, *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (''Limit Up-Limit Down Plan'' or ''Plan'').

[7] *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033) (describing the ''second stage'' of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the ''third stage'' of the single-stock circuit breaker pilot).

[8] NYSE Euronext filed on behalf of New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (''NYSE MKT''). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR–NYSEAmex–2012–32).

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. *See id.*

[12] ''National Best Bid'' and ''National Best Offer'' has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. *See id.*

[13] As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

[14] *See* ''Limit Up-Limit Down Plan,'' *supra* note 6. *See also* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y- Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

[15] *See* ''Second Amendment to Limit Up-Limit Down Plan,'' *supra* note 14.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to suspend a Market Maker's obligations when the underlying security is in a limit up-limit down state is consistent with the Act. When the underlying is in a Limit or Straddle State or is subject to a Trading Halt,[18] there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's decision to suspend a Market Maker's obligations in these limited circumstances is consistent with the Act.

The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring the quoting requirements that are being amended in this proposed rule change and determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act[19] for approving the proposed rule change on an accelerated basis. The proposal is in part related to the Plan, which will become operative on April 8, 2013.[20] Without accelerated approval, the proposed rule change, and any attendant benefits, would take effect after the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[21] that the proposed rule change (SR–BATS–2013–016) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08556 Filed 4–11–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69342; File No. SR–MIAX–2013–12]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Obvious Errors in Limit or Straddle States

April 8, 2013.

I. Introduction

On March 22, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for how the Exchange proposes to treat erroneous options transactions in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan''). The proposed rule change was published for comment in the **Federal Register** on March 27, 2013.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

Since May 6, 2010, when the financial markets experienced a severe disruption, the equities exchanges and the Financial Industry Regulatory Authority have developed market-wide measures to help prevent a recurrence. In particular, on May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[5] The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands, creating a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks.[6]

In connection with the implementation of the Plan, the Exchange proposes to adopt Commentary .06 to Rule 521 to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Rule 521 for a one year pilot basis following the adoption of the proposed rule change.[7] The Exchange proposes to adopt new Rule 530(j) to apply to erroneous transactions in options when the underlying NMS Stock has entered either a Limit or Straddle State. In addition, the Exchange proposes to retain the ability to review all erroneous transactions that occur during Limit States and Straddle

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[16] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b).

[18] The Commission notes that, pursuant to BATS Rule 20.5, BATS will halt trading in the option when the trading in the underlying is halted as a result of a circuit breaker. Therefore, the proposal to suspend market maker quoting obligations when the underlying is subject to a trading halt would apply to other, non-circuit breaker-related instances when the underlying is no longer trading, but, pursuant to Rule 20.3, BATS has elected to continue trading the overlying option.

[19] 15 U.S.C. 78s(b)(2).

[20] *See supra* note 15.

[21] 15 U.S.C. 78f(b)(2).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69210 (March 22, 2013), 78 FR 18637 (''Notice'').

[4] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Douglas M. Schafer, Executive Vice President, Chief Information Officer, MIAX, dated February [sic] 5, 2013 (''MIAX Letter'').

[5] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498.

[6] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[7] The Exchange stated that members of the Exchange staff have spoken to its member organizations about obvious and catastrophic errors during a Limit State or Straddle State and that the Exchange has received generally favorable feedback concerning its proposed rule change, given the built-in customer protections in the Exchange system.

States resulting only from a verifiable disruption or malfunction of an Exchange execution, dissemination or communication system pursuant to new Rule 530(j).

Rule 521 provides a process by which a transaction may be nullified or adjusted when the execution price of a transaction deviates from the option's theoretical price by a certain amount. Generally, the theoretical price of an option is the National Best Bid and Offer (''NBBO'') of the option. In certain circumstances, Exchange officials have the discretion to determine the theoretical price.[8]

The Exchange believes that none of these methods is appropriate during a Limit State or Straddle State. Under Rule 521(b)(1), the theoretical price is determined with respect to the NBBO for an option series just prior to the trade. According to the Exchange, during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical price should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. Because the approach under Rule 521(b)(1) by definition depends on a reliable NBBO, the Exchange does not believe that approach is appropriate during a Limit State or Straddle State. Additionally, because the Exchange system will only trade through the theoretical bid or offer if the Exchange or the participant (via an ISO order) has accessed all better priced interest away in accordance with the Options Order Protection and Locked/Crossed Markets Plan, the Exchange believes potential trade reviews of executions that occurred at the participant's limit price and also in compliance with the aforementioned Plan could harm liquidity and also create an advantage to either side of an execution depending on the future movement of the underlying stock.

With respect to Rule 521(b)(2), affording discretion to the Exchange Official to determine the theoretical price and thereby, ultimately, whether a trade is busted or adjusted and to what price, the Exchange notes that it would be difficult to exercise such discretion in periods of extraordinary market volatility and, in particular, when the price of the underlying security is unreliable. The Exchange again notes that the theoretical price in this context would be subjective.[9] Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting fair and orderly markets. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying these provisions during such unusual market conditions.

In response to these concerns, the Exchange proposes to adopt Commentary .06 to Rule 521, which provides that transactions in MIAX options that overly an NMS stock are not subject to obvious error or catastrophic error review under Rule 521 during a Limit State or Straddle State. In addition, the Exchange proposes to adopt new Rule 530(j) to allow the Exchange to review all erroneous transactions occurring during Limit States and Straddle States that resulted only from a verifiable disruption or malfunction of an Exchange execution, dissemination or communication system. Accordingly, the Exchange is proposing to incorporate the relevant portions of Rule 521 into proposed Rule 530(j) to establish the process for such review. Proposed Rule 530(j) also will include analogous language to that used in current Rule 521 regarding mutual agreement by the parties to an erroneous transaction during a trading halt (*i.e.,* trades on the Exchange will be nullified when (i) the trade occurred during a trading halt in the affected option on the Exchange, or (ii) respecting equity options, the trade occurred during a trading halt on the primary market for the underlying security) and the relevant elements of Rule 521 regarding the review procedure, requests for review and appeals from decisions to bust a trade.

III. Discussion

The Commission finds that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In the filing, the Exchange notes its belief that suspending certain aspects of Rule 521 during a Limit State or Straddle State will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange during Limit States and

[8] Specifically, under Rule 521, the theoretical price is determined in one of three ways: (i) If the series is traded on at least one other options exchange the last National Best Bid price with respect to an erroneous sell transaction and the last National Best Offer price with respect to an erroneous buy transaction, just prior to the trade; (ii) as determined by an Exchange Official, if there are no quotes for comparison purposes, or if the bid/ask differential of the NBBO for the affected series, just prior to the erroneous transaction, was at least two times the standard bid/ask differential as permitted for pre-opening quotes under Rule 603(b)(4); or (iii) for transactions occurring as part of the Exchange's automated opening system, the Theoretical Price shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

[9] The Exchange also notes that the determination of theoretical price under Rule 521(b)(3) applies to trades executed during openings. Because the Exchange does not intend to open an option during a Limit State or Straddle State, this provision will not apply.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

Straddle States, thus promoting fair and orderly markets.

The Exchange, however, has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. The Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude electronic trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Rule 521. The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states that by rejecting market orders, and cancelling pending market orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Additionally, the Exchange notes the existence of SEC Rule 15c3–5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. The Exchange will also continue to review erroneous transactions occurring during Limit or Straddle States that resulted from a verifiable disruption or malfunction of an Exchange execution, dissemination or communication system under proposed Rule 530(j). Finally, the Exchange states that the MIAX System is designed with built-in protection mechanisms to prevent trade through the NBBO price at the time of receipt of an order by more than one Minimum Price Variation. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 5, 2013, the Exchange submitted a letter stating that it would provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.[12] This will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

Finally, the Commission notes that the Plan, to which these rules relate, will be implemented on April 8, 2013. Accordingly, for the reasons stated above, and in consideration of the April 8, 2013 implementation date of the Plan, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[13] for approving the Exchange's proposal prior to the 30th day after the publication of the notice in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–MIAX–2013–12), be, and hereby is, approved on an accelerated basis.

[12] In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Rule 6.65A(c), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) The options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. *See* MIAX Letter, *supra* note 4.

[13] 15 U.S.C. 78s(b)(2). The Commission noticed substantially similar rules proposed by NYSE MKT LLC and NYSE Arca, Inc. with a full 21 day comment period. *See* Securities Exchange Act Release No. 69033, 78 FR 15067 (March 8, 2013) and Securities Exchange Act Release No. 69032, 78 FR 15080 (March 8, 2013).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08611 Filed 4–11–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8272]

State Department Advisory Committee on Private International Law; Closed Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(a), the Department of State announces a meeting of the full Advisory Committee on Private International Law (ACPIL) to take place on May 13, 2013, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(d), and 5 U.S.C. 552b(c)(9)(B), it has been determined that this ACPIL meeting will be closed to the public because the ACPIL will be discussing matters the public disclosure of which would be likely to significantly frustrate Department negotiations in an upcoming international forum.

For more information, contact Tricia Smeltzer at 202–776–8423 or *smeltzertk@state.gov*, or Niesha Toms at 202–776–8420, *tomsnn@state.gov.*

Dated: April 5, 2013.

Michael Coffee,

Attorney-Adviser, Private International Law.

[FR Doc. 2013–08663 Filed 4–11–13; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Critical Parts for Airplane Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 28, 2013, vol. 78, no. 18, pages 5859–5860. The Federal Aviation Administration (FAA) is amending the airworthiness standards for airplane propellers. This action will define what a propeller critical part is, require the identification of propeller critical parts by the manufacturer, and establish engineering, manufacture, and maintenance processes for those parts. These processes will be required to be recorded and maintained within company manuals. The intended effect of this rule is to ensure the continued airworthiness of propeller critical parts by requiring a system of processes to identify and manage these parts throughout their service life. Adopting this rule will eliminate regulatory differences between part 35 and European Aviation Safety Agency (EASA) propeller critical parts requirements, thereby simplifying airworthiness approvals for exports.

DATES: Written comments should be submitted by June 11, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–XXXX.

Title: Critical Parts for Airplane Propellers.

Form Numbers: There are no forms associated with this information collection activity.

Type of Review: Clearance of a new information collection.

Background: On December 1, 2011, FAA published a notice of proposed rulemaking titled ''Critical Parts for Airplane Propellers'' (76 FR 74749). This activity contains new Paperwork Reduction Act recordkeeping requirements that were not addressed in that notice of proposed rulemaking, and which are addressed here. The rule will require that U.S. companies who manufacture critical parts for airplane propellers update their manuals to record engineering, manufacture, and maintenance processes for propeller critical parts. The required manual updates will be used by the propeller manufacturer to show compliance with the propeller critical parts requirements. There are currently three U.S. companies who will be required to revise their manuals to include these processes.

Respondents: Three manufacturers.

Frequency: This is a one time requirement.

Estimated Average Burden per Response: 40 hours.

Estimated Total Annual Burden: 120 hours.

ADDRESSES: 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/FAA, 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.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on April 8, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–08623 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Safety Awareness, Feedback, and Evaluation (SAFE) Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The information collected will be used by FAA Flight Standards Service to improve the quality and delivery of the services and products provided to their stakeholders.

DATES: Written comments should be submitted by June 11, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–XXXX.

Title: Safety Awareness, Feedback, and Evaluation (SAFE) Program.

Form Numbers: No FAA forms are associated with this collection.

Type of Review: Clearance of a new information collection.

Background: Executive Order 12862 requires the Federal Government to provide the ''highest quality service possible to the American people.'' The FAA Flight Standards Service has designed the Safety Awareness, Feedback, and Evaluation (SAFE) Program to measure the aviation community stakeholder perception of effectiveness with various FAA-mandated and regulatory programs.

Respondents: A total sample of 3,218 commercial and non-commercial pilots, repair station operators, maintenance technicians, and air carrier operations managers.

Frequency: Information will be collected once annually per individual stakeholder group.

Estimated Average Burden per Response: 20 minutes.

Estimated Total Annual Burden: 358 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 8, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–08622 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certificated Training Centers—Simulator Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 7, 2012, vol. 77, no. 236, page 73113–73114. To determine regulatory compliance, there is a need for airmen to maintain records of certain training and recency of experience; a training center has to maintain records of student's training, employee qualification and training, and training program approvals.

DATES: Written comments should be submitted by May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0570.

Title: Certificated Training Centers—Simulator Rule.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: 14 CFR part 142.73 requires that training centers maintain records for a period of one year to show trainee qualifications for training, testing, or checking, training attempts, training checking, and testing results, and for one year following termination of employment the qualification of instructors and evaluators providing those services. The information is maintained by the certificate holder and subject to review by aviation safety inspectors (operations), designated to provide surveillance to training centers to ensure compliance with airman training, testing, and certification requirements specified in other parts of 14 CFR.

Respondents: Approximately 113 training centers and associated satellite facilities.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1,177.6 hours.

Estimated Total Annual Burden: 126,092 hours.

ADDRESSES: 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/FAA, 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.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 3, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–08548 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Notice of Landing Area Proposal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting

comments on the following collection of information was published on November 30, 2012, vol. 77, no. 231, page 71473. FAA Form 7480–1 (Notice of Landing Area Proposal) is used to collect information about any construction, alteration, or change to the status or use of an airport.

DATES: Written comments should be submitted by May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0036.

Title: Notice of Landing Area Proposal.

Form Numbers: FAA Form 7480–1.

Type of Review: Renewal of an information collection.

Background: FAR Part 157 requires that each person who intends to construct, deactivate, or change the status of an airport, runway, or taxiway must notify the FAA of such activity. The information collected provides the basis for determining the effect the proposed action would have on existing airports and on the safe and efficient use of airspace by aircraft, the effects on existing or contemplated traffic patterns of neighboring airports, the effects on the existing airspace structure and projected programs of the FAA, and the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal.

Respondents: Approximately 1500 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 45 minutes.

Estimated Total Annual Burden: 1,125 hours.

ADDRESSES: 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/FAA, 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.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on April 3, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–08543 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Airport Noise Compatibility Planning

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 28, 2013, vol. 78, no. 18, page 5857. The respondents are those airport operators voluntarily submitting noise exposure maps and noise compatibility programs to the FAA for review and approval.

DATES: Written comments should be submitted by May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0517.

Title: Airport Noise Compatibility Planning.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The voluntarily submitted information from the current CFR Part 150 collection, e.g., airport noise exposure maps and airport noise compatibility programs, or their revisions, is used by the FAA to conduct reviews of the submissions to determine if an airport sponsor's noise compatibility program is eligible for Federal grant funds. If airport operators did not voluntarily submit noise exposure maps and noise compatibility programs for FAA review and approval, the airport operator would not be eligible for the set aside of discretionary grant funds.

Respondents: Approximately 15 airport operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3882.6 hours.

Estimated Total Annual Burden: 56,160 hours.

ADDRESSES: 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/FAA, 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.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 3, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–08545 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aeronautical Chart Point of Sale Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 30, 2012, vol. 77, no. 231, pages 71472–71473. Aeronautical Chart Point of Sale Survey data will be used by the Federal Aviation Administration to measure management objectives and analyze customer feedback for ISO–9001.

DATES: Written comments should be submitted by May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0741.

Title: Aeronautical Chart Point of Sale Survey.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The Aviation System Standards Distribution Dissemination Quality Plan states that the organization shall determine, collect, and analyze appropriate data to demonstrate the suitability and effectiveness of the Quality Management System in relation to customer satisfaction. The Glenn Dale Distribution Center collects the customer feedback for Aviation System Standards Quality Management objectives. To accomplish the research objectives, Customers receive an email with a web link to an anonymous and voluntary survey twice a year. This information is used by Aviation System Standards to help evaluate current aeronautical product customer service at the point of sale.

Respondents: An estimated 320 aeronautical product customers.

Frequency: This information is collected semi-annually.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 53 hours.

ADDRESSES: 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/FAA, 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.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 3, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–08551 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reduction of Fuel Tank Flammability on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 28, 2013, vol. 78, no. 18, page 5860. The FAA's Fuel Tank Flammability rule requires manufacturers to report to the FAA every six months for up to 5 years after the flammability reduction system is incorporated into the fleet. The data is needed to assure system performance meets that predicted at the time of certification.

DATES: Written comments should be submitted by May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0710.

Title: Reduction of Fuel Tank Flammability on Transport Category Airplanes.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Design approval holders use flammability analysis documentation to demonstrate to their FAA Oversight Office that they are compliant with the Fuel Tank Flammability Safety rule (73 FR 42443). Semi-annual reports submitted by design approval holders provide listings of component failures discovered during scheduled or unscheduled maintenance so that the reliability of the flammability reduction means can be verified by the FAA.

Respondents: Approximately 5 design approval holders.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 4,000 hours.

ADDRESSES: 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/FAA, 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.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 3, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–08549 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Request To Release Airport Property at the Oakley Municipal Airport (OEL), Oakley, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Oakley Municipal Airport (OEL), Oakley, Kansas, under the provisions of 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before May 13, 2013.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Jacob Wood, City Administrator, Oakley Municipal Airport, City of Oakley, 209 Hudson Ave., Oakley, KS 67748, (785) 671–3136, *oakleyca@st-tel.net.*

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2644, *lynn.martin@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 2.5 acres of airport property at the Oakley Municipal Airport (OEL) under the provisions of 49 U.S.C. 47107(h)(2). On October 22, 2012, the City of Oakley's City Administrator requested from the FAA that approximately 2.5 acres of property be released for sale to Matt Mildenberger of Mitten's, Inc. for a restaurant. On March 5, 2013, the FAA determined that the request to release property at Oakley Municipal Airport (OEL) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice. The following is a brief overview of the request:

Oakley Municipal Airport (OEL) is proposing the release of a parcel, totaling 2.5 acres. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Oakley Municipal Airport (OEL) being changed from aeronautical to nonaeronautical use and release the lands from the conditions of the AIP Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation facilities at the Oakley Municipal Airport. Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Oakley Municipal Airport.

Issued in Kansas City, MO on March 26, 2013.

Jim A. Johnson

Manager, Airports Division.

[FR Doc. 2013–08553 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty First Meeting: RTCA Special Committee 216, Aeronautical Systems Security (Joint Meeting With EUROCAE WG–72)

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

ACTION: Meeting Notice of RTCA Special Committee 216, Aeronautical Systems Security (Joint Meeting with EUROCAE WG–72).

SUMMARY: The FAA is issuing this notice to advise the public of the twenty first meeting of RTCA Special Committee 216, Aeronautical Systems Security (Joint Meeting with EUROCAE WG–72).

DATES: The meeting will be held May 13–17, 2013, from 9:00 a.m.–5:00 p.m. but ending at 3:00 p.m. on the last day.

ADDRESSES: The meeting will be held at EASA, Ottoplatz 1, 50679 Köln (Cologne), Germany.

FOR FURTHER INFORMATION CONTACT: Contact Cyrille Rosay at +49–221–899 90 4045 or *cyrille.rosay@easa.europa.eu.* Additionally, you may contact the RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site *http://www.rtca.org* for directions.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 216. The agenda will include the following:

Monday, May 13, 2013

- Introductions
- High-level document status
- Review level of maturity of contributions to document drafts
- Discuss linkages between the two documents
- Review proposed changes to glossary
- Subgroup breakouts (SG2 and SG4)
  - Discuss document status in further detail
  - Develop plan for subgroup discussions
  - Identify remaining tasks

Tuesday–Thursday, May 14–May 16

- Subgroup breakouts
  - Afternoon may consist of work team breakouts to write needed material

Friday, May 17

- Reconvene in Subgroup breakouts
  - Discuss document status and agree on directions for documents
  - Prepare reports for plenary
- Joint Plenary
  - Subgroup status reports
  - Review schedule and decide on readiness of documents for Final Review and Comment
  - Identify next steps
- 3:00 p.m. (1500) Wrap-Up, Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 4, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–08539 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighteenth Meeting: RTCA Special Committee 214, Standards for Air Traffic Data Communication Services

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

ACTION: RTCA Special Committee 214, Standards for Air Traffic Data Communication Services meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 214, Standards for Air Traffic Data Communication Services.

DATES: The meeting will be held May 8, 2013 from 10:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at RTCA, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Sophie Bousquet, *sbousquet@rtca.org*, 202–330–0663 or you can reach The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services. The agenda will include the following:

May 8, 2013

- Welcome/Introduction/ Administrative Remarks
- Approval of Agenda
- VDL Sub-Group Update Change 1 to DO–224C & Change 1 to DO–281B (Dongsong Zeng)
- Approve TOR Chagens to add to the SC deliverables
  - Change 1 to DO–224C ''Singal-in-Space Minimum Aviation System Performance Standards (MASPS) for Advanced VHF Digital Data Communications Including Compatibility with Digital Voice Techniques''
- Approve TOR Changes to add to the SC deliveralbes
  - Change 1 to DO–281B ''Minimum Operational Performance Standards (MOPS) for Aircraft VDL Mode 2 Physical Link and Network Layer''
- Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 5, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–08541 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty First Meeting: RTCA Special Committee 224, Airport Security Access Control Systems

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

ACTION: Meeting Notice of RTCA Special Committee 224, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the twenty first meeting of the RTCA Special Committee 224, Airport Security Access Control Systems.

DATES: The meeting will be held April 9–10, 2013 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

May 9–10, 2013

- Welcome, Introductions & Administrative Remarks
- Review and Approve Summary of Twentieth Meeting
- Updates from TSA (as required)
- Document Detailed Review
- Document Finalization Process
- Time and Place of Next Meeting
- Any Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 5, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–08542 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0009]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated January 24, 2013, the Black Hills Central Railroad (BHC) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 230, Steam Locomotive Inspection and Maintenance Standards. FRA assigned the petition Docket Number FRA–2013–0009.

Located in South Dakota, BHC is a privately owned railroad that has operated on 10 miles of scenic right-of-way between Hill City and Keystone since 1957. The line was originally a branch off of the Chicago, Burlington and Quincy Railroad's ''Highline,'' constructed in 1900, that operated from Edgemont to Deadwood. BHC presently operates as a seasonal, tourist operation and no longer operates as part of the general railroad system of transportation.

BHC currently has three oil-burning, Baldwin steam locomotives; one EMD

GP9; and a Whitcomb center cab switch engine in service. BHC requests a waiver for Locomotive BHC 7 (BHC 7), a 2–6–2 tender-type steam locomotive built in 1919. The locomotive originally burned coal but was converted to oil in 1923. It operates at 190 psi boiler pressure. BHC 7 is non-super-heated; consequently, it is not operated on a regular basis due to its fuel consumption. It has accumulated 29 days of service since the last flexible staybolt and cap inspection in March 2008. The current 1472 service-day inspection (SDI) expires in April 2015.

BHC requests relief from 49 CFR 230.16(a)(2), with respect to flexible staybolt and cap inspection and 49 CFR 230.41, *Flexible staybolts with caps.* BHC requests an additional 2 years to the prescribed 5-year period to perform the flexible staybolt and cap inspection, thereby extending the inspection period to a total of 7 years. BHC will perform the annual inspection pursuant to 49 CFR 230.16. Granting the waiver would allow BHC 7 to undergo an annual inspection without the added burden of removing the locomotive cab, boiler jacketing, and attendant insulation, which is required for the flexible staybolt and cap inspection. Additionally, the flexible staybolt and cap inspection would coincide with the next 1472 SDI. BHC believes that due to the limited days of service for BHC 7, the railroad's high standard of safety would not be compromised.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 28, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as is practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on April 8, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–08620 Filed 4–11–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Alternative Transportation in Parks and Public Lands Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Paul S. Sarbanes Transit in Parks Program Announcement of FY 2012 Project Selections.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the selection of projects for the Paul S. Sarbanes Transit in Parks Program, as authorized by Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users of 2005 (SAFETEA–LU) and codified in 49 U.S.C. 5320. Projects were selected from proposals submitted in response to a Notice of Funding Availability (NOFA) published in the **Federal Register** on August 28, 2012. These projects are funded with Fiscal Year (FY) 2012 appropriations and previously unallocated prior year funds. The Paul S. Sarbanes Transit in Parks program provides funds for capital and planning expenses for alternative transportation systems in national parks and other federal recreation lands. Federal land management agencies and State, tribal and local governments acting with the consent of a federal land management agency are eligible recipients. This program was not re-authorized for FY 2013 under the Moving Ahead for Progress in the 21st Century Act (MAP–21), and FTA does not anticipate publishing future NOFAs for this program. If additional funds become available during FY 2013 from previous project awards, FTA may allocate these funds to project proposals previously submitted.

FOR FURTHER INFORMATION CONTACT: Project sponsors who are State, local, or tribal entities may contact the appropriate FTA Regional Office (*http://www.fta.dot.gov/offices*) for grant-specific issues. Project sponsors who are part of a federal land management agency should work with the contact listed below at their headquarters office to coordinate the availability of funds to that unit.

- *National Park Service:* Mark H Hartsoe, *Mark_H_Hartsoe@nps.gov;* tel: 202–513–7025, fax: 202–371–6675, mail: 1849 C Street NW., (MS2420); Washington, DC 20240–0001.
- *Fish and Wildlife Service:* Nathan Caldwell, *Nathan_Caldwell@fws.gov,* tel: 703–358–2205, fax: 703–358–2517, mail: 4401 N. Fairfax Drive, Room 634; Arlington, VA 22203.
- *Forest Service:* Rosana Barkawi, *rosanabarkawi@fs.fed.us,* tel: 703–605–4509, mail: 1400 Independence Avenue SW., Washington, DC 20250–1101.
- *Bureau of Land Management:* Victor F. Montoya, *Victor_Montoya@blm.gov,* tel: 202–912–7041, mail: 1620 L Street, WO–854, Washington, DC 20036.

For general information about the Paul S. Sarbanes Transit in Parks Program, please contact Adam Schildge, Office of Program Management, Federal Transit Administration, at *adam.schildge@dot.gov,* 202–366–0778.

SUPPLEMENTARY INFORMATION: FTA announces the selection of projects for the Paul S. Sarbanes Transit in Parks Program for Fiscal Year (FY) 2012. Congress appropriated $26,900,000 for FTA's Paul S. Sarbanes Transit in Parks program for FY 2012. Of this amount, $13,382,750 was allocated to projects in January 2012 in response to a NOFA published in the **Federal Register** on March 10, 2011. Of the remaining amount, $1,750,000 has been allocated to continue the operation of the Transit in Parks Technical Assistance Center for

an additional year, $500,000 will be administered cooperatively with the Federal Highway Administration (FHWA) in order to support the coordination of Federal land management agency transportation investments with public transportation systems that operate in the vicinity of Federal lands, and $134,500 is reserved for program oversight activities. In addition to the remaining $11,132,750 from FY 2012, $1,365,171 is available for project awards from unallocated prior year funds. As a result, the total amount available for project awards in response to the August 28, 2012 NOFA is $12,497,921.

A total of 89 applicants submitted eligible proposals for a combined total of $62.8 million. A joint review committee of the U.S. Department of Interior, the U.S. Department of Agriculture's Forest Service and DOT evaluated the project proposals based on the criteria defined in 49 U.S.C. 5320(g)(2). Final selections were made through a collaborative process.

The goals of the program are to conserve natural, historical, and cultural resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experience; and ensure access to all, including persons with disabilities, through alternative transportation projects. A total of 29 projects located in 20 States and affiliated with five Federal land management agencies were selected to receive a combined total of $12,497,921. The projects selected to use FY 2012 funding represent a diverse set of capital and planning projects across the country, ranging from shuttle bus purchases to the construction of ferry dock infrastructure, and are listed in Table 1.

Applying for Funds

Recipients who are State or local government entities will be required to apply for Paul S. Sarbanes Transit in Parks program funds electronically through FTA's electronic grant award and management system, TEAM. These entities are assigned discretionary project IDs as shown in Table I of this notice. The content of these grant applications must reflect the approved proposal. (**Note:** Applications for the Paul S. Sarbanes Transit in Parks program do not require Department of Labor Certification.) Upon grant award, payments to grantees will be made by electronic transfer to the grantee's financial institution through FTA's Electronic Clearing House Operation (ECHO) system. FTA's Regional Offices are available to assist applicants.

Recipients who are federal land management agencies will be required to enter into an interagency agreement (IAA) with FTA. Agencies may also flex funding for trail projects to the FHWA Federal Lands Highway Program. Consistent with section 9.5.2(a) of the ''Department of Transportation Financial Management Policies Manual'' (October 24, 2006), funds awarded to Federal land management agencies through interagency agreements remain available for a period of five years from execution of the agreement. Individual units of federal land management agencies should work with the contact at their headquarters office listed above to coordinate the availability of funds to that unit.

Program Requirements

Section 5320 requires funding recipients to meet certain requirements. Requirements that reflect existing statutory and regulatory provisions can be found in the document ''Alternative Transportation in Parks and Public Lands Program: Requirements for Recipients'' available at *www.fta.dot.gov/transitinparks.* These requirements are incorporated into the grant agreements and inter-agency agreements used to fund the selected projects.

Pre-Award Authority

Pre-award authority allows an agency that will receive a grant or interagency agreement to incur certain project costs prior to receipt of the grant or interagency agreement and retain eligibility of the costs for subsequent reimbursement after the grant or agreement is approved. The recipient assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility, including compliance with Federal requirements such as the National Environmental Policy Act (NEPA), planning requirements, and provisions established in the grant contract or Interagency Agreement. Under the authority provided in 49 U.S.C. 5320(h), FTA is extends pre-award authority for FY 2012 Paul S. Sarbanes Transit in Parks projects announced in this notice effective February 18, 2013 when the projects were publicly announced, and the basis the below conditions have been met.

The conditions under which pre-award authority may be utilized are specified below:

a. Pre-award authority is not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds for the project. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

b. All FTA statutory, procedural, and contractual requirements must be met.

c. No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

d. Local funds expended pursuant to this pre-award authority will be eligible for reimbursement if FTA later makes a grant or interagency agreement for the project(s). Local funds expended by the grantee prior to the February 18, 2013 public announcement will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as, demolition, or construction, prior to the completion of the NEPA process, would compromise FTA's ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.

e. When a grant for the project is subsequently awarded, the Financial Status Report in TEAM-Web must indicate the use of pre-award authority, and the pre-award item in the project information section of TEAM should be marked ''yes.''

Reporting Requirements

All recipients must submit quarterly reports to FTA containing the following information:

(1) Narrative description of project(s); and,

(2) discussion of all budget and schedule changes.

The headquarters office for each federal land management agency should collect a quarterly report for each of the projects delineated in the interagency agreement and then send these reports (preferably by email) to Adam Schildge, FTA, *mailto: adam.schildge@dot.gov*; 1200 New Jersey Avenue, Washington, DC 20590. Examples can be found on the program Web site at *http://www.fta.dot.gov/transitinparks.* State, local and tribal governments will provide this information to FTA via the TEAM-Web system for projects that are funded through FTA grants.

The quarterly reports are due to FTA on the dates noted below:

Quarter	Covering	Due date
1st Quarter Report	October 1–December 31	January 31.
2nd Quarter Report	January 1–March 31	April 30.
3rd Quarter Report	April 1–June 30	July 31.
4th Quarter Report	July 1–September 31	October 31.

In order to allow FTA to compute aggregate program performance measures FTA requires that all recipients of funding for capital projects under the Paul S. Sarbanes Transit in Parks program submit the following information as a part of their fourth quarter report:

■ Annual visitation to the relevant land unit;

■ annual number of persons who use the alternative transportation system (ridership/usage);

■ an estimate of the number of vehicle trips mitigated based on alternative transportation system usage and the typical number of passengers per vehicle;

■ cost per passenger; and,

■ a note of any special services offered for those systems with higher costs per passenger but more amenities.

Oversight

Recipients of FY 2012 Paul S. Sarbanes Transit in Parks program funds will be required to certify that they will comply with all applicable Federal and FTA programmatic requirements. FTA direct grantees will complete this certification as part of the annual Certification and Assurances package, and Federal Land Management Agency recipients will complete the certification by signing the interagency agreement. This certification is the basis for oversight reviews conducted by FTA.

The Secretary of Transportation and FTA have elected not to apply the triennial review requirements of 49 U.S.C. 5307(h)(2) to Paul S. Sarbanes Transit in Parks program recipients that are other Federal agencies. Instead, working with the existing oversight systems at the Federal Land Management Agencies, FTA will perform periodic reviews of specific projects funded by the Paul S. Sarbanes Transit in Parks program. These reviews will ensure that projects meet the basic statutory, administrative, and regulatory requirements as stipulated by this notice and the certification. To the extent possible, these reviews will be coordinated with other reviews of the project. FTA direct grantees of Paul S. Sarbanes Transit in Parks program funds (State, local and tribal government entities) will be subject to all applicable triennial, State management, civil rights, and other reviews.

Issued in Washington, DC, this 8th day of April 2013.

Peter Rogoff,

Administrator.

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State	Federal Land Management Agency	Federal Land Unit Sponsor	Local Funding Recipient (if applicable)	Project Description	Discretionary Award ID	Awarded Amount
CA	National Park Service	Golden Gate National Recreation Area		Funds will be used to construct connections between the Presidio Multi-use Trail and local transit service.		$400,000
CA	National Park Service	Muir Woods National Monument	Marin County Transit District	Funds will be used to acquire vehicles and make facility upgrades for Muir Woods Shuttle Service.	D2012-ATPL-008	$638,000
CA	Bureau of Land Management; Fish & Wildlife Service; USDA Forest Service; National Park Service	USDA Forest Service, Pacific Southwest Region		Funds will be used to assist with multi-agency transit coordination for underserved communities in Central and Southern California.		$200,000
CA	Bureau of Land Management; Fish & Wildlife Service; USDA Forest Service; National Park Service; Army Corps of Engineers	USDA Forest Service, Southwest Region		Funds will be used to develop and implement a traveler information system for transit service to Federal Lands in Southern California.		$299,500
CA	National Park Service	Yosemite National Park	Yosemite Area Regional Transportation System (YARTS)	Funds will be used to purchase one clean-diesel motor coach for YARTS service to Yosemite National Park.	D2012-ATPL-009	$583,941
CO	Fish & Wildlife Service	Rocky Mountain Arsenal National Wildlife Refuge Complex		Funds will be used to construct the "Rocky Mountain Greenway" multi-user trail to connect wildlife refuges in the Denver metropolitan area.		$1,735,000
CO	USDA Forest Service	San Juan National Forest		Funds will be used to acquire vehicles for access road shuttle service to Chimney Rock National Monument.		$140,000
CO	National Park Service	Rocky Mountain National Park	Town of Estes Park, CO	Funds will be used for the Fall River Multi-Use Trail System Enhancement Project.	D2012-ATPL-010	$337,000
FL	Fish & Wildlife Service	Merritt Island NWR		Funds will be used to support a planning study to coordinate transit service to refuge.		$100,000
HI	National Park Service	Ala Kahakai National Historic Trail		Funds will be used to construct historic trail infrastructure.		$275,000

State	Federal Land Management Agency	Federal Land Unit Sponsor	Local Funding Recipient (if applicable)	Project Description	Discretionary Award ID	Awarded Amount
NM	National Park Service	Aztec Ruins National Monument	City of Aztec, NM	Funds will be used to extend the Aztec Ruins Trail from the park boundary to the city-owned greenway and trailhead.	D2012-ATPL-013	$319,900
NM	USDA Forest Service; Army Corps of Engineers	Valles Caldera Trust, USDA Forest Service		Funds will used to implement an electric vehicle public transportation system for backcountry visitation.		$545,000
NY	National Park Service	Gateway National Recreation Area		Funds will continue the construction of Jacob Riis Park ferry dock and extend the Jamaica Bay Greenway through nearby communities.		$1,575,000
OK	Fish & Wildlife Service	Wichita Mountains National Wildlife Refuge		Funds will construct enhancements for three multi-user trail projects.		$444,500
OR	USDA Forest Service	Mount Hood National Forest	Oregon Department of Transportation	Funds will be used to acquire vehicles to expand the Mountain Express Bus service.	D2012-ATPL-014	$460,400
TX	National Park Service	San Antonio Missions National Historic Park	City of San Antonio, TX	Funds will be used to expand the San Antonio Missions National Historic Park Bike Share program.	D2012-ATPL-015	$295,774
TX	National Park Service	San Antonio Missions National Historic Park		Funds will be used for wayfinding, mapping, and a public information campaign for alternative transportation.		$137,000
UT	Bureau of Land Management; National Park Service	BLM Moab Field Office	Grand County, UT	Funds will be used to construct the Colorado Riverway Path extension to a campground and highway crossing.	D2012-ATPL-016	$900,000
VA	Fish & Wildlife Service	Back Bay National Wildlife Refuge		Funds will be used to purchase a new transit vehicle to transport visitors along a beachfront area between Back Bay National Wildlife Refuge and False Cape State Park in southeastern Virginia.		$94,000
WA	Fish & Wildlife Service	Ridgefield National Wildlife Refuge		Funds will be used to replace a pedestrian bridge over an adjacent railroad to comply with federal accessibility standards.		$250,000

State	Federal Land Management Agency	Federal Land Unit Sponsor	Local Funding Recipient (if applicable)	Project Description	Discretionary Award ID	Awarded Amount
CA	National Park Service	Golden Gate National Recreation Area		Funds will be used to construct connections between the Presidio Multi-use Trail and local transit service.		$400,000
CA	National Park Service	Muir Woods National Monument	Marin County Transit District	Funds will be used to acquire vehicles and make facility upgrades for Muir Woods Shuttle Service.	D2012-ATPL-008	$638,000
CA	Bureau of Land Management; Fish & Wildlife Service; USDA Forest Service; National Park Service	USDA Forest Service, Pacific Southwest Region		Funds will be used to assist with multi-agency transit coordination for underserved communities in Central and Southern California.		$200,000
CA	Bureau of Land Management; Fish & Wildlife Service; USDA Forest Service; National Park Service; Army Corps of Engineers	USDA Forest Service, Southwest Region		Funds will be used to develop and implement a traveler information system for transit service to Federal Lands in Southern California.		$299,500
CA	National Park Service	Yosemite National Park	Yosemite Area Regional Transportation System (YARTS)	Funds will be used to purchase one clean-diesel motor coach for YARTS service to Yosemite National Park.	D2012-ATPL-009	$583,941
CO	Fish & Wildlife Service	Rocky Mountain Arsenal National Wildlife Refuge Complex		Funds will be used to construct the "Rocky Mountain Greenway" multi-user trail to connect wildlife refuges in the Denver metropolitan area.		$1,735,000
CO	USDA Forest Service	San Juan National Forest		Funds will be used to acquire vehicles for access road shuttle service to Chimney Rock National Monument.		$140,000
CO	National Park Service	Rocky Mountain National Park	Town of Estes Park, CO	Funds will be used for the Fall River Multi-Use Trail System Enhancement Project.	D2012-ATPL-010	$337,000
FL	Fish & Wildlife Service	Merritt Island NWR		Funds will be used to support a planning study to coordinate transit service to refuge.		$100,000
HI	National Park Service	Ala Kahakai National Historic Trail		Funds will be used to construct historic trail infrastructure.		$275,000

[FR Doc. 2013–08653 Filed 4–11–13; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. FD 35724]

California High-Speed Rail Authority—Construction Exemption—In Merced, Madera and Fresno Counties, CA

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Adoption Recommendation and Recirculation of Final Environmental Impact Statement.

SUMMARY: In accordance with Surface Transportation Board (Board) procedures for complying with the National Environmental Policy Act (NEPA) at 49 CFR part 1105, and consistent with the regulations of the Council on Environmental Quality (CEQ) for implementing NEPA at 40 CFR 1506.3, the Board's Office of Environmental Analysis (OEA) is

recommending that the Board adopt a Final Environmental Impact Statement (Final EIS) issued by the Federal Railroad Administration (FRA) and California High-Speed Rail Authority (Authority). This Final EIS is titled ''California High-Speed Train: Merced to Fresno Section, Final Project Environmental Impact Report/ Environmental Impact Statement.''

The Final EIS assesses the potential environmental impacts of constructing and operating a high-speed passenger train (HST) between Merced and Fresno in the San Joaquin Valley, California. OEA has independently reviewed the Final EIS and agrees with its analysis and conclusions. OEA is issuing this notice to advise the public and interested agencies that, should the Board find jurisdiction over the Authority's project, OEA is recommending, in any decision ruling on the request for construction authority, that the Board adopt the Final EIS issued by FRA and the Authority to satisfy the Board's NEPA obligations.

FOR FURTHER INFORMATION CONTACT: Dave Navecky, Office of Environmental Analysis, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, 202–245–0294. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

If you wish to file comments on the proposed adoption of the Final EIS by the Board, please send an original and one copy to Surface Transportation Board at the address above to the attention of Dave Navecky. Environmental comments may also be filed electronically on the Board's Web site, *www.stb.dot.gov*, by clicking on the ''E-FILING'' link. Please refer to Docket No. FD 35724 in all correspondence, including e-filings, addressed to the Board. Comments may be submitted to OEA no later than May 20, 2013.

SUPPLEMENTARY INFORMATION:

Background: By petition filed on March 27, 2013, the Authority seeks authority to construct a HST rail line between Merced and Fresno, California (Merced to Fresno HST Section). Concurrently on March 27, 2013, the Authority filed a Motion to Dismiss its Petition for Exemption asserting that the Merced to Fresno HST Section does not require the Board's construction approval under 49 U.S.C. 10901.[1]

The Merced to Fresno HST Section would be the first of nine sections of the planned California HST system, which would provide intercity, high-speed passenger rail service over more than 800 miles throughout California and connect the major population centers of the state. The HST system would be an electric-powered train system with automated train controls and would operate at up to 220 miles per hour over a fully grade-separated and dedicated rail line. The Merced to Fresno HST Section would include passenger stations in the cities of Merced and Fresno (i.e., this section's termini), approximately 65 miles of double-tracked mainline, and four tracks at the two stations (i.e., two through tracks and two station tracks to load and unload passengers).

According to the Authority, it filed a motion to dismiss its request for authority from the Board because it does not have any contracts or any other arrangements in place at this time that would come within the Board's jurisdiction and require Board authority. Specifically, the Authority claims that the Board lacks jurisdiction because the Merced to Fresno HST Section would be located entirely within the State of California, would provide only intrastate passenger rail service, and would not be constructed or operated as part of the interstate rail network under 49 U.S.C. 10501(a)(2)(A). The Authority requests that the Board expedite its consideration of the Petition for Exemption and either grant it, or dismiss it pursuant to the Motion to Dismiss, effective by June 17, 2013 so that the Authority can award contracts for the design and construction of a 29-mile sub-section of the project in the summer of 2013.

Pending the Board's decisions on the Authority's Petition for Exemption and Motion to Dismiss, and considering the Authority's request for an expedited decision, OEA is issuing this notice to advise the public and interested agencies that OEA is recommending that, in any decision in which the Board might determine that it has jurisdiction to rule on the Authority's proposal, the Board adopt the Final EIS issued by FRA and the Authority for the construction of the Merced to Fresno HST Section to satisfy the Board's NEPA obligations. Issuance of this notice now does not prejudge the Board's review of the Authority's petition or motion.

Previous Environmental Reviews: For the Merced to Fresno HST Section, FRA and the Authority were joint lead agencies for Federal reviews under NEPA, and the Authority was lead agency for state reviews under the California Environmental Quality Act (CEQA). The U.S. Army Corps of Engineers (USACE) and the Bureau of Reclamation[2] also served as cooperating agencies in the Federal environmental review of the project. To comply with NEPA and CEQA, FRA and the Authority jointly began the environmental review process for the Merced to Fresno HST Section in 2009 and issued a Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS) in August 2011.[3] Considering information in and comments received on the Draft EIS, FRA and the Authority issued a Final EIS in April 2012. The Final EIS identified the Authority's preferred build alternative. FRA and the USACE concurred with the Authority's preferred build alternative.

FRA issued a Record of Decision (ROD) under NEPA on September 18, 2012. Based on an analysis of potential project impacts, required mitigation measures, and substantive agency and public comments, FRA approved the preferred build alternative in the Final EIS that includes the north-south Hybrid Alternative, and the Downtown Merced Station and Downtown Fresno Mariposa Street Station alternatives.

Board Environmental Review: CEQ's regulations allow Federal agencies, such as the Board, to adopt the environmental documents prepared by another Federal agency when the proposed actions are ''substantially the same'' and the adopting agency has concluded that the initial statement meets the standards for an adequate statement under CEQ's regulations (40 CFR 1506.3). Furthermore, the CEQ regulations state that when actions are substantially the same, ''the agency adopting the agency's statement is not required to recirculate it except as a final statement.''

OEA has conducted an independent review of the 2012 Final EIS for the purpose of determining whether the Board could adopt it under 40 CFR 1506.3. OEA concludes that (1) the proposed construction specified in the Authority's Petition for Exemption is substantially the same as that described in the 2012 Final EIS; (2) the Final EIS adequately assessed the potential environmental impacts associated with the proposed Merced to Fresno HST Section and meets the standards of

[1] The Authority's Petition for Exemption and Motion to Dismiss are available on the Board's Web site at *www.stb.dot.gov* (click on ''Filings'' under ''Quick Links,'' then search by Docket # ''FD'' and ''35724'').

[2] The Bureau of Reclamation is a cooperating agency but does not have jurisdiction over a permit or approval for this section of the HST system.

[3] The preparation of this single environmental review document, which covers both Federal and state environmental requirements, is consistent with CEQ regulations at 40 CFR 1506.2. The EIS/EIR will be referred to in this notice as an EIS because, should the Board assert jurisdiction over this project, NEPA would be triggered.

CEQ's NEPA regulations; and (3) to satisfy its NEPA obligations, the Board could adopt the 2012 Final EIS in any decision finding jurisdiction over the project and ruling on the Authority's request for construction authority.

If the Board finds jurisdiction to rule on the Authority's proposal, in order to comply with its obligations under Section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), OEA, on behalf of the Board, would also join the existing Memorandum of Agreement (MOA), signed and executed by FRA, Authority, Advisory Council on Historic Preservation, and California Historic Preservation Officer. The MOA describes the roles and responsibilities of the parties and would allow the Board to take into account the potential effect of the Board's actions on historic properties pursuant to the requirements of Section 106.

In accordance with the U.S. Environmental Protection Agency's (EPA) regulations (40 CFR 1506.3(b)) and guidelines (EIS Filing System Guidance, 77 Fed. Reg. 51530–51532) regarding the filings of adopted EISs, OEA has provided EPA with this notice of Final EIS adoption recommendation and electronically filed the recirculated Final EIS with EPA. EPA will publish a notice of availability of the recirculated Final EIS in the **Federal Register** consistent with its usual practices. Because of the multi-volume size of the Final EIS and its continued availability in the libraries of the affected communities and the Authority's Web site, OEA is not republishing the document. This would be unduly costly, would defeat CEQ's goals of reducing paperwork and duplication effort, and would be of little additional value to other agencies or the public. The Final EIS is available on the Authority's Web site at *www.cahighspeedrail.ca.gov/final-eir-m-f.aspx*, and at local libraries in the following California communities: Atwater, Chowchilla, Fresno, Le Grand, Los Banos, Madera, and Merced. OEA has mailed this notification to the recipients of the Final EIS at the time it was issued by FRA and the Authority in April 2012, as well as the parties of record to the Board's proceedings. Comments on the Board's proposed adoption of the Final EIS may be submitted to Dave Navecky at the address noted above, or filed electronically on the Board's Web site, no later than May 20, 2013.

If the Board finds jurisdiction over the project, the final stage of the environmental review process under NEPA would be the issuance of the Board's final decision on the Petition for Exemption (i.e., Record of Decision). This Board decision would describe the agency's decision on whether to authorize the Authority's proposed construction, and whether it adopts OEA's recommendations, including OEA's recommendation to formally adopt the Final EIS. In addition, the Board decision would take into account any substantive comments received in response to today's notice of proposed Final EIS adoption. Under the timelines included in CEQ's regulations (40 CFR 1506.10), the Board's final decision cannot be issued any earlier than thirty days after EPA publishes its **Federal Register** notice notifying the public of OEA's adoption recommendation and availability of the recirculated Final EIS (Note: OEA anticipates that EPA will publish this notice of Final EIS adoption in the **Federal Register** on Friday, April 19, 2013). Any final decision issued by the Board finding jurisdiction and ruling on the Authority's proposal would be consistent with 40 CFR 1505.2 and the Board's environmental rules at 49 CFR part 1105.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–08646 Filed 4–11–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

ACTION: Notice; correction.

SUMMARY: The Department of the Treasury published a document in the **Federal Register** on March 28, 2013, inviting comments on collections of information submitted to the Office of Management and Budget (OMB) for review. This document contained incorrect references.

Correction

In the **Federal Register** of March 28, 2013, in FR Doc. 2013–07165, make the following corrections:

- page 19070, in the third column, under *OMB Number:* 1513–0016, *Type of Review:* replace ''Extension without change'' with ''Revision'' and *Estimated Total Burden Hours:* replace ''94'' with ''134.''

Dated: April 9, 2013.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–08647 Filed 4–11–13; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 9, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before May 13, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave., NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at PRA@treasury.gov, or the entire information collection request maybe found at *www.reginfo.gov.*

Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559—NEW.

Type of Review: New generic collection.

Title: Native American Communities' Access to Capital and Credit Study.

Abstract: Pursuant to the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*), the CDFI Fund provides training and technical assistance to CDFIs to enhance their ability to make loans and investments and provide services for the benefit of designated investment areas and targeted populations. Further, the CDFI Fund administers the Native Initiatives, which serve Native Communities. The information collected will be used to identify specific subject matter and data to develop and write the Study. The Study will update the 2001 Native American Lending Study conducted by the CDFI Fund, which resulted in the creation of the Native Initiatives. The requested information is necessary to support effective use of Federal resources.

Affected Public: Certified CDFIs, entities seeking CDFI certification and similar entities.

Estimated Total Burden Hours: 2,500.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–08645 Filed 4–11–13; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

ACTION: Notice; correction.

SUMMARY: The Department of the Treasury published a document in the **Federal Register** on March 28, 2013, inviting comments on collections of information submitted to the Office of Management and Budget (OMB) for review. This document contained incorrect references.

Correction

In the **Federal Register** of March 28, 2013, in FR Doc. 2013–07169, make the following corrections:

- Page 19071, in the third column, under *OMB Number:* 1545–0028, *Type of Review:* Replace ''Extension without change'' with ''Revision''.
- page 19072, in the first column, under *OMB Number:* 1545–0231, *Estimated Total Burden Hours:* Replace ''231,693'' with ''21,252''.
- page 19072, in the third column, under *OMB Number:* 1545–2151, *Type of Review:* Replace ''Extension without change'' with ''Revision'', *Title:* Replace ''2009–72'' with ''2013–12'', and *Estimated Total Burden Hours:* Replace ''110,000'' with ''55,000''.
- page 19073, in the first column, under *OMB Number:* 1545–2235, *Type of Review:* Replace ''Extension without change'' with ''Revision''; *Title:* Add to the end of the title ''and Statistics of Income—User Fees''; *Form:* Add ''and 14417–A'' to the end of the sentence, and *Estimated Total Burden Hours:* Replace ''150'' with ''160''.

Dated: April 9, 2013.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–08651 Filed 4–11–13; 8:45 am]

BILLING CODE 4810–30–P

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW., Washington, DC, on April 30, 2013 at 9:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. § 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. § 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Deputy Director for Office of Debt Management (202) 622–1876.

Dated: April 3, 2013.

Matthew S. Rutherford,

Assistant Secretary (Financial Markets).

[FR Doc. 2013–08405 Filed 4–11–13; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2001–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2001–1, Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

DATES: Written comments should be received on or before June 11, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Katherine Dean, (202) 622–3186, or at Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW.,

Washington DC 20224, or through the Internet, at *Katherine.b.dean@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

OMB Number: 1545–1716.

Notice Number: Notice 2001–1.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeepers: 20.

Estimated Average Time per Respondent/Recordkeeper: 44 hours.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 870 hours.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 15, 2013.

Yvette Lawrence,

OMB Reports Clearance Officer.

[FR Doc. 2013–08575 Filed 4–11–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–19, Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

DATES: Written comments should be received on or before June 11, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrencde, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Katherine Dean at Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3186, or through the Internet at *kathernie.b.dean@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

OMB Number: 1545–1589.

Revenue Procedure Number: Revenue Procedure 98–19.

Abstract: Revenue Procedure 98–19 provides guidance to organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, not-for-profit institutions and farms.

Estimated Number of Organizations: 15,000.

Estimated Average Time per Organizations: 10 hours.

Estimated Total Annual Recordkeeping Hours: 150,000.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of ≤automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 15, 2013.

Yvette Lawrence,

OMB Reports Clearance Officer.

[FR Doc. 2013–08573 Filed 4–11–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2011–34, Rules for Certain Rental Real Estate Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure RP–125212–09, Rules for Certain Rental Real Estate Activities.

DATES: Written comments should be received on or before June 11, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Katherine Dean (202)-622–3186, at Internal Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Katherine.b.dean@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2011–34 Rules for Certain Rental Real Estate Activities.

OMB Number: 1545–2194.

Abstract: This Revenue Procedure Grants Relief Under Section 1.469–9(g) for Certain Taxpayers to Make Late Elections to Treat All Interests in Rental Real Estate as a Single Rental Real Estate Activity.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2000.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 15, 2013.

Yvette Lawrence,

OMB Reports Clearance Officer.

[FR Doc. 2013–08578 Filed 4–11–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning qualified conservation contributions (§ 1.170A–14).

DATES: Written comments should be received on or before June 11, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Katherine Dean at Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3186, or through the Internet at *Katherine.b.dean@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Qualified Conservation Contributions.

OMB Number: 1545–0763. *Regulation Project Number:* TD 8069.

Abstract: Internal Revenue Code section 170(h) describes situations in which a taxpayer is entitled to a deduction for a charitable contribution for conservation purposes of a partial interest in real property. This regulation requires a taxpayer claiming a deduction to maintain records of (1) the fair market value of the underlying property before and after the donation and (2) the conservation purpose of the donation.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 1000.

Estimated Time per Respondent: 1 hour 15 minutes.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 13, 2013.

Yvette Lawrence,

OMB Reports Clearance Officer.

[FR Doc. 2013–08544 Filed 4–11–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the branch tax; the branch profits Tax; and the regulations on effectively connected income and the branch profits tax (§§ 1.884–1, 1.884–2, 1.884–2T, 1.884–4, 1.884–5).

DATES: Written comments should be received on or before June 11, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Katherine Dean, at (202) 622–3186, or at Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Katherine.b.dean@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: TD 8223, Branch Tax; TD 8432, Branch Profits Tax; and TD 8657, Regulations on Effectively Connected Income and the Branch Profits Tax.

OMB Number: 1545–1070.

Regulation Project Number: TD 8223, TD 8432, and TD 8657.

Abstract: These regulations provide guidance on how to comply with Internal Revenue Code section 884, which imposes a tax on the earnings of a foreign corporation's branch that are removed from the branch and which subjects interest paid by the branch, and certain interest deducted by the foreign corporation, to tax.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 59,100.

Estimated Time per Respondent: 12.887 minutes.

Estimated Total Annual Burden Hours: 12,694.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 14, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–08552 Filed 4–11–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the limitation on reduction in income tax liability incurred to the Virgin Islands (§ 1.934–1).

DATES: Written comments should be received on or before June 11, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Katherine Dean, (202) 622–3186, or at Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW., Washington DC 20224, or through the Internet, at *Katherine.b.dean@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands.

OMB Number: 1545–0782.

Regulation Project Number: TD 6629.

Abstract: Internal Revenue Code section 934(a)(1954 code) provides that the tax liability incurred to the Virgin Islands shall not be reduced except to the extent provided in Code section

934(b) and (c). Taxpayers applying for tax rebates or subsidies under section 934 of the 1954 Code must provide certain information in order to obtain these benefits.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent/ Reporting: 12 minutes.

Estimated Time Per Respondent/ Record-Keeping: 10 minutes.

Estimated Total Annual Reporting Burden Hours: 100.

Estimated Total Annual Record-keeping Burden Hours: 85.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 13, 2013.

Yvette Lawrence,

OMB Reports Clearance Officer.

[FR Doc. 2013–08547 Filed 4–11–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning proceeds of bonds used for reimbursement (§ 1.150–2(e) (originally contained in § 1.104–18(c)).

DATES: Written comments should be received on or before June 11, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Katherine Dean, at (202) 622–3186, or at Internal Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Katherine.b.dean@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Proceeds of Bonds Used for Reimbursement.

OMB Number: 1545–1226.

Regulation Project Number: FI–59–89.

Abstract: This regulation clarifies when the allocation of bond proceeds to reimburse expenditures previously made by an issuer of the bond is treated as an expenditure of the bond proceeds. The issuer must express a reasonable official intent, on or prior to the date of payment, to reimburse the expenditure in order to assure that the reimbursement is not a device to evade requirements imposed by the Internal Revenue Code with respect to tax exempt bonds.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 2 hours, 24 minutes.

Estimated Total Annual Burden Hours: 6,000.

The following paragraph applies to all of the collections of 1information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 14, 2013.

Yvette Lawrence,

OMB Reports Clearance Officer.

[FR Doc. 2013–08554 Filed 4–11–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the credit for increasing research activity.

DATES: Written comments should be received on or before June 11, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Katherine Dean at Internal Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202)622–3186, or through the Internet at *Katherine.b.dean@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Increasing Research Activity.

OMB Number: 1545–0732.

Regulation Project Number: LR–236–81. T.D. 8251.

Abstract: This regulation provides rules for the credit for increasing research activities. Internal Revenue Code section 41(f) provides that commonly controlled groups of taxpayers shall compute the credit as if they are single taxpayer. The credit allowed to a member of the group is a portion of the group's credit. Section 1.41–8(d) of the regulation permits a corporation that is a member of more than one group to designate which controlled group they will be aggregated with the purposes of Code section 41(f).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 63.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 2013.

R. Joseph Durbala,

OMB Reports Clearance Officer.

[FR Doc. 2013–08572 Filed 4–11–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning estate and gift Taxes; qualified disclaimers of property (Section 25.2518–2(b)).

DATES: Written comments should be received on or before June 11, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Katherine Dean, at Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3186, or through the Internet at *Katherine.b.dean@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Estate and Gift Taxes; Qualified Disclaimers of Property.

OMB Number: 1545–0959.

Regulation Project Number: TD 8095.

Abstract: Internal Revenue Code section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the disclaimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 13, 2013.

Yvette Lawrence,

OMB Reports Clearance Officer.

[FR Doc. 2013–08550 Filed 4–11–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–24

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–24, Advanced Insurance Commissions.

DATES: Written comments should be received on or before June 11, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Katherine Dean at Internal Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3186, or through the Internet at *Katherine.b.dean@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Advanced Insurance Commissions.

OMB Number: 1545–1736.

Revenue Procedure Number: Revenue Procedure 2001–24.

Abstract: A taxpayer that wants to obtain automatic consent to change its method of accounting for cash advances on commissions paid to its agents must agree to the specified terms and conditions under the revenue procedure. This agreement is ratified by attaching the required statement to the federal income tax return for the year of change.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,270.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,318.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 15, 2013.

Yvette Lawrence,

OMB Reports Clearance Officer.

[FR Doc. 2013–08576 Filed 4–11–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Bond of Indemnity to the United States of America.

DATES: Written comments should be received on or before June 13, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Special Bond of Indemnity to the United States of America.

OMB Number: 1535–0062.

Form Number: PD F 2966.

Abstract: The information is requested to support a request for refund of the purchase price of savings bonds purchased in a chain letter scheme.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,400.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 320.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 8, 2013.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2013–08504 Filed 4–11–13; 8:45 am]

BILLING CODE 4810–39–P

FEDERAL REGISTER

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Part II

Department of Agriculture

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4280

Rural Energy for America Program—Grants and Guaranteed Loans; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4280

RIN 0570–AA76

Rural Energy for America Program—Grants and Guaranteed Loans

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: Rural Development, a mission area within the U.S. Department of Agriculture, is proposing grant and guaranteed loan programs for renewable energy systems and energy efficiency improvement projects as provided in the Food, Conservation, and Energy Act of 2008. The proposed rule will revise the Rural Energy for America Program (REAP) found in 7 CFR part 4280, subpart B.

DATES: Comments on the proposed rule must be received on or before June 11, 2013. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through June 11, 2013.

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

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Kelley Oehler, Branch Chief, Energy Division, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3225, Washington, DC 20250–3201; telephone (202) 720–6819.

SUPPLEMENTARY INFORMATION:

EXECUTIVE SUMMARY

I. Purpose of the Regulatory Action

This proposed rule will revise 7 CFR part 4280, subpart B to include changes that the Agency had previously identified, but did not include in the April 2011 Interim Rule. The Agency did not include these changes in order to expedite the implementation of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) program modifications and to improve the administration of the program via an updated regulation rather than, in part, through **Federal Register** notices. This proposed rule fulfills our commitment to implement changes that were not included in the April 2011 Interim Rule.

The Agency is authorized under Section 9001 of the 2008 Farm Bill and Section 9007 of the amended Farm Security and Rural Investment Act of 2002 to continue providing to agricultural producers and rural small businesses loan guarantees and grants for the development and construction of renewable energy systems and energy efficiency improvement projects. The 2008 Farm Bill also authorized the Agency to provide grants specifically for energy audits, renewable energy development assistance, and renewable energy system feasibility studies.

II. Summary of Major Provisions of the Regulatory Action

The major substantive changes being proposed, along with a brief justification for each, are presented below.

- *Project eligibility.* The Agency is proposing to allow the purchase of refurbished renewable energy systems and the retrofitting of an existing renewable energy system as eligible projects under this subpart. These changes allow the Agency to provide funds to such projects in recognition of the maturation of the renewable energy industry, wherein earlier generations of systems are now being refurbished or retrofitted with more energy efficient components. To illustrate the difference between retrofitting and refurbishing, consider the following wind turbine example. A wind turbine would be considered retrofitted if new blades were put on to improve the efficiency of the turbine. If, however, the turbine is taken off site to a factory to have its gears and other worn parts replaced, it would be considered refurbished.

For energy efficiency improvement projects, the Agency is proposing several changes, including ensuring that energy efficiency improvements use less energy on an annual basis than the original building and/or equipment they improve or replace in order to be eligible for program funding. These changes are being proposed to provide clarification and achieve consistency in the administration of the program.

- *Technical reports.* Changes being proposed for technical reports include simplifying the energy efficiency improvement technical report; simplifying the technical report for renewable energy system projects with total project costs of $200,000 or less; revising provisions associated with what is required for an energy assessment and an energy audit; providing for a single technical report option for renewable energy systems submitted through the process for applications for projects with total project costs of $200,000 or less; and eliminating the distinction between large and small solar and wind projects in preparing the technical reports. The Agency is proposing these changes to reduce overall burden for the program and streamline the application process.
- *Applications.* The proposed rule incorporates three grant application processes—one for projects with total project costs greater than $200,000; one for projects with total project costs of $200,000 or less (but more than $80,000); and one for projects with total project costs of $80,000 or less. The three application processes require different amounts of paperwork. With the proposed changes, the smaller the total project costs, the lesser amount of paperwork and burden associated with the process. The Agency is proposing these changes to reduce overall burden for the program and to streamline the grant application process by requesting documentation for a complete application based on total project costs.
- *Scoring criteria.* The Agency is proposing to modify several elements of the scoring criteria including eliminating the technical merit and commercial availability criteria; adding a criterion based on energy generated per dollar requested; modifying the size of the agricultural producer/small business criterion; and modifying the environmental benefits criterion. These changes are being proposed to make the scoring more objective and to better align the scoring metrics with the goals of the program.
- *Pre-commercial technology.* The Agency is proposing to remove pre-commercial technology as an eligible technology. As proposed, only commercially available technologies would be eligible for grants and guaranteed loans. The Agency is making this change to avoid overlap with the Biorefinery Assistance guaranteed loan program.

• *Energy audit requirement threshold for Energy Efficiency Improvements (EEI) applications.* The Agency is proposing to raise the threshold for requiring an energy audit (versus an energy assessment) from $50,000 to $200,000 in total project cost. The Agency is proposing this change because experience with the program shows that the information provided in an energy assessment for these projects is sufficient for the Agency to assess the merits of the EEI project. Additionally, this change makes it unnecessary for an applicant to incur the cost of a full energy audit for a $50,000 project when an energy assessment provides sufficient information for the Agency to evaluate the project.

• *Energy analysis.* The Agency is proposing to allow for an energy efficiency improvement project with total project costs of $80,000 or less to conduct an energy analysis instead of an energy assessment or an energy audit. The Agency is proposing this because the information provided by an energy analysis for these size projects is sufficient for the Agency to assess the merits of the EEI project, while at the same time reducing the costs to the applicant as an energy analysis is less costly than an energy assessment.

• *Competing guaranteed loan only applications.* The Agency is proposing to implement for guaranteed loan-only applications a quarterly competition. Guaranteed loan-only applications that achieve a minimum priority score would compete for available funds on the first business day of the second month of each Federal fiscal quarter. Guaranteed loan-only applications that do not achieve the minimum priority score would only be able to compete for funding during the last quarter of the Federal fiscal year. The change to quarterly awards is intended to make this part of REAP more appealing to lenders and prospective borrowers by ensuring funds are available all year, while competing the loan applications is intended to help ensure the most worthwhile projects receive priority for funding.

III. Summary of Benefits and Costs

A Regulatory Impact Analysis (RIA) was undertaken to examine the benefits and costs of the proposed changes to the Interim Rule for REAP. The RIA calculated a net cost savings due to proposed improvements in the implementation of the REAP program.

The estimate of benefits under the proposed rule are not expected to differ significantly from those that would have occurred under the Interim Rule for REAP. However, the net savings afforded to applicants and to the federal government as a result of streamlining and reduced burden will result in positive net benefits. Using the estimate of cost changes per application and the estimate of the number of applications will be affected by this rulemaking, the net benefits of this rule are estimated to be approximately $3.7 million in Fiscal Year 2013.

In addition, these changes are not expected to affect the nature and size of the environmental and energy impacts of the REAP program. While there are expected to be job benefits from REAP funding, these jobs were not quantified.

Background Information

Executive Order 12866

This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined to be economically significant by the Office of Management and Budget. The EO defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency conducted a benefit-cost analysis to fulfill the requirements of EO 12866. In this analysis, the Agency identifies potential benefits and costs of REAP to lenders, borrowers, and the Agency. The analysis contains quantitative estimates of the burden to the public and the Federal government and qualitative descriptions of the expected economic, environmental, and energy impacts associated with REAP.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

Under this program, the Agency conducts a National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* review for each application received. To date, no significant environmental impacts have been reported, and Findings of No Significant Impact (FONSI) have been issued for each approved application. Taken collectively, the applications show no potential for significant adverse cumulative effects.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with NEPA, an Environmental Impact Statement is not required. Grant and guaranteed loan applications will be reviewed individually to determine compliance with NEPA.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under EO 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

It has been determined, under EO 13132, Federalism, that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The

provisions contained in the proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. Rural Development made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The regulatory impact analysis conducted for this proposed rule meets the requirements for EO 13211, which states that an agency undertaking regulatory actions related to energy supply, distribution, or use is to prepare a Statement of Energy Effects. This analysis finds that this proposed rule will not have any adverse impacts on energy supply, distribution, or use.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is not subject to the provisions of EO 12372, which require intergovernmental consultation with State and local officials.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This EO imposes requirements on Rural Development in the development of regulatory policies that have Tribal implications or preempt Tribal laws. Rural Development has determined that the proposed rule has substantial direct effects on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian Tribes. This rule was included in the USDA Joint Agency Regional Consultations that consolidated consultation efforts of 70 rules from the 2008 Farm Bill. USDA Rural Development sent senior level agency staff to seven regional locations and reached out to Tribal leadership in each region to consult on this proposed rule. Upon completion of the consultation process, USDA Rural Development analyzed the feedback and incorporated input from the consultation into this regulation.

For example, with the intent to increase Tribal participation in the program, the definition of a small business in this rule includes Tribal corporations chartered under Section 17 of the Indian Reorganization Act (25 U.S.C. 477) or other Tribal business entities that have similar structures and relationships with their Tribal governments as determined by the Agency. The Agency shall determine the small business status of such a Tribal entity without regard to the resources of the Tribal government.

USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule. The policies contained in this rule do not have implications that preempt Tribal law.

Programs Affected

The Catalog of Federal Domestic Assistance program number assigned to the affected program is 10.868, Rural Energy for America Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, USDA Rural Development will seek the Office of Management and Budget (OMB) approval of the reporting and recordkeeping requirements contained in this rule and hereby open a 60-day public comment period.

Title: Rural Energy for America Program.

Type of Request: New collection.

Abstract: Rural Development is providing grants and guaranteed loans for the construction or retrofitting of renewable energy systems and to make energy efficiency improvements; grants for energy audits; grants for renewable energy development assistance; and grants for feasibility studies for renewable energy systems. This financial assistance is contained in 7 CFR part 4280, subpart B.

The collection of information is vital for Rural Development to make wise decisions regarding the eligibility of projects and borrowers in order to ensure compliance with the regulations and that the funds obtained from the Government are used appropriately (e.g., used for the purposes for which the guaranteed loans were awarded). The type of information required depends on the type of financial assistance being sought, as summarized below.

1. *Renewable energy systems (RES) and energy efficiency improvements (EEI) grants.* Persons seeking RES or EEI grants under this program will have to submit applications applicable to the size of their proposed projects. The information to be included is similar, but applications for projects with total project costs of $200,000 or less require less information to be submitted than applications for projects with total project costs of more than $200,000. Similarly, applications for projects with total project costs of $80,000 or less require still less information to be submitted than the other applications.

All applications require certain forms and certifications, applicant information (or, in the case of applications for projects with total project costs of $80,000 or less, a certification that the applicant is eligible), project information (or, in the case of applications for projects with total project costs of $80,000 or less, a certification that the project is eligible), information on previous grants and guaranteed loans received under REAP, information on environmental benefits, and matching funds, and a technical report. Applications for projects with total project costs of more than $200,000 also require financial information on the applicant and any affiliated companies, and, if the application is for a renewable energy system with total project costs of more than $200,000, a feasibility study for the renewable energy system. Information in the application will be used to determine applicant and project eligibility, including if the project has technical merit.

Between grant approval and completion of project construction, grantees are required to submit semiannual performance reports, with a final project development report due once the project has been constructed.

Once the project has been completed, annual reports are required on the project. For a renewable energy system project, the outcome project performance report is required annually for 3 years following its completion. For an energy efficiency improvement project, the outcome project performance report is required annually for 2 years following its completion.

2. *Renewable energy systems and energy efficiency improvements guaranteed loans.* With one major exception, persons seeking loan guarantees under this program will have to submit applications that include the information required for grant applications of similar total project costs. For example, loan guarantee requests for total project costs of $200,000 or less would follow the application requirements of grants with total project costs of $200,000 or less (but more than $80,000). The major exception is in regards to the forms, certifications, and agreements required for loan guarantee applications, which include, but are not limited to, the lender's analysis, appraisals, commercial credit reports on the borrower, and proposed loan agreement. The information included in applications for loan guarantee will be used to determine applicant and project eligibility and to ensure that funds are used for projects that are likely to be financially sound.

Once a project has been approved and the loan has been guaranteed, lenders must submit periodic reports on the status of their loan portfolios and, when applicable, bimonthly default reports. In addition, lenders are required to conduct annual inspections of each completed project.

3. *Renewable energy system feasibility study grants.* Persons seeking a renewable energy system feasibility study grant will have to submit certain standard forms; the primary North American Industry Classification System (NAICS) code applicable to the applicant's operation if known or a description of the operation in enough detail for the Agency to determine the primary NAICS code; certification that the applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the state(s) where the applicant has a place of business; a proposed scope of work; certification that the applicant has not received any other Federal or State assistance for a feasibility study for the same renewable energy system project that is the subject of the application; if the applicant is a rural small business, certification that the feasibility study grant will be for a renewable energy system project that is located in a rural area; and certification associated with financial information to determine the applicant's size. The information included in applications will be used to determine applicant and project eligibility and to ensure that funds are used for viable projects. Beginning the first full year after the feasibility study has been completed, a grantee is required to submit an outcome project performance report annually for 2 years on the status of the renewable energy system for which the feasibility study was completed.

4. *Energy audit and renewable energy development assistance grants.* Entities seeking an energy audit or renewable energy development assistance grant will have to submit certain standard forms; certification that the applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the state(s) where the applicant has a place of business; and a proposed scope of work. The information included in applications for the grant will be used to determine applicant and project eligibility and to ensure that funds are used for viable projects.

While the project activities are being completed, grantees must submit semi-annual performance reports, which will, in part, compare actual accomplishments to the objectives, and a list of recipients. A final performance report is also required. Lastly, an outcome project performance report is required 1 year after submittal of the final performance report.

Estimate of Burden for Entire REAP Rule

The following estimates are based on the average over the first 3 years the program has been in place.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.9 hours per response.

Respondents: Agricultural producers; rural small businesses; units of State, tribal, or local government; instrumentalities of a State, tribal, or local government; land-grant colleges (including 1994 land-grant Tribal Colleges and Universities and 1890 land-grant Historically Black Colleges and Universities); universities, or other institutions of higher education; rural electric cooperatives; and public power entities.

Estimated Number of Respondents: 3,957.

Estimated Number of Responses per Respondent: 14.8.

Estimated Number of Responses: 58,399.

Estimated Total Annual Burden (hours) on Respondents: 219,347.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742 or by calling (202) 692–0040.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of the new Rural Development estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

E-Government Act Compliance

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

I. Background

Rural Development administers a multitude of Federal programs for the benefit of rural America, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, venture capital, and technical support that enables rural communities to prosper. To achieve its mission, Rural Development provides financial support (including direct loans, grants, and loan guarantees) and technical assistance to help enhance the quality of life and provide the foundation for economic development in rural areas.

In response to the Farm Security and Rural Investment Act of 2002 (FSRIA), which established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX,

Section 9006, Rural Business-Cooperative Service (RBS) promulgated a rule (70 FR 41264, July 18, 2005) establishing the renewable energy systems and energy efficiency improvements program (7 CFR part 4280, subpart B) for making grants, loan guarantees, and direct loans to farmers and ranchers (agricultural producers) or rural small businesses to purchase renewable energy systems and make energy efficiency improvements. Renewable energy sources eligible for funding included bioenergy, anaerobic digesters, electric geothermal, direct geothermal, solar, hydrogen, and wind.

Since it established the program, RBS has funded, through FY 2008, over 2,000 projects. Of these, nearly 1,700 projects have received grant-only funds totaling approximately $115 million. Another 327 projects received grants and guaranteed loans, totaling approximately $62.9 million in grant and loan funds combined, while 9 projects received only guaranteed loans totaling approximately $71 million.

Section 9001 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) amended Title IX of the FSRIA. Under the 2008 Farm Bill and Section 9007 of the amended FSRIA, the Agency is authorized to continue providing to agricultural producers and rural small businesses loan guarantees and grants for the development and construction of renewable energy systems and energy efficiency improvement projects. In addition to the current set of renewable energy projects eligible for funding, the 2008 Farm Bill expands the program to include two new renewable energy technologies: hydroelectric and ocean energy. Further, the 2008 Farm Bill authorizes the Agency to provide grants specifically for energy audits, renewable energy development assistance, and renewable energy system feasibility studies. This newly expanded program is referred to as REAP, which continues the Agency's assistance to the adoption of both renewable energy systems and energy efficiency improvements through Federal government loan guarantees and grants.

On April 14, 2011, Rural Development published an Interim Rule for REAP (76 FR 21110). The Interim Rule established a consolidated REAP program by including each part of the program in a single subpart. Up to then, only the RES and EEI grant and guaranteed loan program requirements had been implemented under 7 CFR part 4280, subpart B and, for requirements established by the 2008 Farm Bill, through Federal Register notices. Since the 2008 Farm Bill, the requirements for RES feasibility study grants and for energy audit and renewable energy development assistance grants had been implemented through a series of Federal Register notices. For the RES feasibility studies, these notices were published on May 26, 2009 (74 FR 24769) and August 6, 2010 (75 FR 47525). For energy audits and renewable energy development assistance, these notices were published on March 11, 2009 (74 FR 10533) and May 27, 2010 (75 FR 29706).

As noted in the April 14, 2011, **Federal Register** notice, the Agency indicated that it would publish a proposed rule following publication of the Interim Rule. This notice fulfills that intent.

II. Discussion of Proposed Rule for REAP

In this section, the proposed rule for REAP is described. As has been noted, the Agency is proposing to revise 7 CFR part 4280, subpart B. The following paragraphs discuss the proposed changes, first by identifying several of the more significant changes and then discussing changes by sections.

A. Summary of Significant Changes

The Agency is proposing a number of revisions to 7 CFR part 4280, subpart B based, in part, on its effort to streamline and improve the program. The major substantive changes being proposed are summarized below.

1. Project eligibility. The Agency is proposing to allow the purchase of a refurbished renewable energy system and the retrofitting of an existing renewable energy system as eligible projects for a RES or EEI grant, guaranteed loan or combination guaranteed loan and grant project. In addition, the Agency is clarifying several eligible projects and associated project costs, including:

- Making energy efficiency improvements that will use less energy on an annual basis than the original building and/or equipment that it will improve or replace;
- Replacing multiple pieces of equipment with one piece of equipment that will use less energy on an annual basis; and
- Constructing a new energy efficient building only when the building is used for the same purpose as the existing building, it will be more cost effective to construct a new building, and the new building will use less energy on an annual basis than improving the existing building.

In all cases, the applicant must demonstrate that less energy is used on an annual basis as documented in an energy analysis, assessment, or audit as applicable.

2. *Technical reports.* Numerous changes are being proposed for technical reports including, but not limited to, the following: simplifying the energy efficiency improvement technical report; simplifying the technical report for renewable energy system projects with total project costs of $200,000 or less; revising provisions associated with what is required for an energy assessment and an energy audit; providing for a single technical report option for renewable energy systems submitted through the process for applications for projects with total project costs of $200,000 or less; and eliminating the distinction between large and small solar and wind projects in preparing the technical reports.

3. *Applications.* The Agency is proposing changes to RES and EEI applications that are intended to reduce overall burden for the program and streamline the grant application process by requesting documentation for a complete application based on total project costs. Specifically, the proposed rule has defined three grant application processes to include projects with total project costs greater than $200,000, projects with total project costs of $200,000 or less (but more than $80,000), and projects with total project costs of $80,000 or less. With the proposed changes, the smaller the total project costs, the lesser amount of paperwork and burden associated with the process.

- *Applications for projects with total project costs of less than $200,000.* In addition to compiling applicable provisions into a single section within the rule, the Agency is proposing to remove the requirement that the Agency has to sign off on all procurement contracts for projects with total project costs of less than $200,000 (referred to in 7 CFR part 4280, subpart B as ''simplified'' applications).
- *Applications for projects with total project costs of $80,000 or less.* The Agency is proposing a new application process for projects with total project costs of $80,000 or less. These provisions are intended to reduce the application burden for these smaller projects from the current provisions in the Interim Rule, while still providing the Agency sufficient information to determine applicant and project eligibility and to evaluate and score the applications. The Agency is proposing the $80,000 threshold based on the set-aside for projects seeking grants of $20,000 or less and the maximum grant portion that the Agency can provide of 25 percent of the total project costs. For

more information on how these new provisions differ from the provisions for these applications under the Interim Rule for REAP, please see the discussion on ''Grant applications for projects with total project costs of $80,000 or less'' later in this preamble.

4. *Scoring criteria.* The Agency is proposing to modify several elements of the scoring criteria including eliminating the technical merit and commercial availability criteria; adding a criterion based on energy generated per dollar requested; modifying the size of the agricultural producer/small business criterion; and modifying the environmental benefits criterion. For a more detailed accounting of the changes being proposed to the scoring criteria, please see discussion for Table 1 under the ''Section by section discussion of revisions to the RES and EEI Grant and Guaranteed Loan Program'' later in this preamble.

5. *Pre-commercial technology.* The Agency is proposing to remove pre-commercial technology as an eligible technology. As proposed, only commercially available technologies would be eligible for grants and guaranteed loans.

6. *Energy audit requirement threshold for EEI applications.* The Agency is proposing to raise the threshold for requiring an energy audit (versus an energy assessment) from $50,000 to $200,000 in total project cost.

7. *Construction planning and performing development.* The Agency is proposing a major reorganization and clarification of these provisions to address confusion under 7 CFR part 4280, subpart B and to provide greater consistency in its implementation by each state.

8. *Competing guaranteed loan applications.* The Agency is proposing to establish new procedures for competing guaranteed loan applications. Major features of the new procedures are:

- Establishing quarterly competitions for guaranteed loan-only applications;
- Establishing each year a minimum score to determine whether an application is competed in each quarter (only those applications that score at or above the minimum score) or only in the last quarter of the Federal fiscal year (those applications that score below the minimum score and all other applications that were not funded);
- Procedures for making awards when there are insufficient funds available; and
- Limiting the number of competitions each application can participate for funding—four quarters for applications that score at or above the minimum score and only the last quarter of the Federal fiscal year for applications that score below the minimum score and all other applications that were not funded.

The proposed procedures are intended to encourage more guaranteed loan applications by making awards throughout the year. This allows potential applicants more flexibility in preparing and submitting their applications. Further, the Agency is encouraging better projects by establishing a minimum score.

Section by Section Discussion of Revisions to the RES and EEI Grant and Guaranteed Loan Program

Purpose (§ 4280.101)

The only change being proposed to this section is the removal of the reference to ''in rural areas'' because certain projects proposed by agricultural producers may be eligible for REAP funds even though the project is located in a non-rural area. The Agency is proposing this change for two reasons.

First, the Agency has determined that there are a number of agricultural producers that operate in non-rural areas that can benefit from REAP. Such agricultural producers may include commercial nurseries and truck farms (the growing of one or more crops on a scale necessary for shipment to distant markets) that are located near urban areas.

Second, to the extent the authorizing statutes allow, the Agency wanted REAP to be consistent with the Biorefinery Assistance Program, the Repowering Assistance Program, and the Advanced Biofuel Payment Program. The three programs do not include a rural area requirement in their respective interim rules published in February 2011.

Organization of This Subpart (§ 4280.102)

The purpose of this section continues to be providing the reader with an overview of the organization of the subpart. The section has been updated to reflect the changes in the rule.

Definitions (§ 4280.103)

The Agency is revising or deleting some of the definitions, as well as cross-referencing § 4279.2 for guaranteed loan terms. The Agency is also proposing to define several new terms.

Revised Terms

- *Anaerobic digester project.* The primary revision to this term is replacing ''waste'' with ''or other Renewable Biomass'' in order to clarify that human waste is an eligible feedstock to anaerobic digesters.
- *Bioenergy project.* This term is being updated to refer to ''Renewable Biomass'' and is being revised by removing the last portion of the definition referring to anaerobic digesters, which the Agency determined is unnecessary to define the term.
- *Blended liquid transportation fuel.* This term is being clarified by recasting the last part of the definition to refer to Federal or State requirements, whichever of the two is higher.
- *Capacity.* This term is being clarified by replacing ''load'' with ''output rate'' and replacing ''meet'' with ''attain.''
- *Commercially available.* This term is being revised to: (1) clarify that the proven operating history has to be for at least one year and warranties are only required on major parts, and (2) add a provision for technologies currently only available outside the United States to qualify as commercially available.
- *Design/build method.* This term is being revised by replacing ''prime contractor'' with ''contractor.''
- *Eligible project costs.* This term is being revised by including costs that are eligible to be paid or guaranteed with program funds as part of eligible project costs.
- *Energy assessment.* This term is being revised in three ways. First, ''experienced energy assessor, certified energy manager, or professional engineer'' is being replaced with ''Energy Auditor, Energy Assessor, or an individual supervised by either an Energy Assessor or Energy Auditor.'' Second, the assessment of energy ''use'' is being added. Third, the details of what constitutes an energy assessment are being revised and moved from the definition section to Section C of Appendix A of this subpart.
- *Energy assessor.* This term is being revised as to who qualifies as an energy assessor under this subpart and to require that the energy assessor must be a qualified consultant.
- *Energy audit.* This term is being revised in two ways. First, ''certified energy manager or professional engineer'' is being replaced with ''energy auditor.'' Second, the details of what constitutes an energy audit are being revised and moved from the definition section to Section B of Appendix A of this subpart.
- *Energy auditor.* The term is being revised as to who qualifies as an energy auditor under this subpart and to require that the energy auditor must be a qualified consultant.
- *Energy efficiency improvement.* This term is being revised by adding ''or replacement of''; by replacing ''a facility, building, or process'' with ''an

existing building and/or equipment''; and by replacing ''reduce energy consumption, or reduce energy consumed per square foot'' with ''reduces energy consumption on an annual basis.''

• *Feasibility study.* This term is being revised by adding ''conducted by a qualified consultant.''

• *Financial feasibility.* This term is being revised by referring to ''sufficient income'' rather than ''the income.''

• *Geothermal electric generation.* This term is being clarified by referring to ''thermal energy from a geothermal source'' and by removing ''high pressure steam for'' because it is not needed.

• *Hydroelectric energy.* The term being defined in the proposed rule is now ''hydroelectric source'' to conform to the terminology in the 2008 Farm Bill. In addition, the definition has been clarified to refer to it as a ''Renewable Energy System producing electricity.'' Lastly, the definition now includes reference to hydroelectric sources with a rated power of 30 megawatts or less, rather than having a separate definition for small hydropower.

• *Hydrogen project.* This definition is being edited for clarification.

• *Instrumentality.* Examples have been added to the definition.

• *Interconnection agreement.* This term is being revised by adding ''A contract containing'' to the beginning of the definition.

• *Matching funds.* This term is being clarified by referring to total eligible project costs instead of eligible project costs.

• *Passive investor.* This term is being clarified by replacing ''arrangement'' with ''agreement.''

• *Qualified consultant.* This term is being expanded by incorporating from the definition of ''qualified party'' the concept of an independent third-party.

• *Renewable biomass.* The definition for renewable biomass is provided to the Agency by the 2008 Farm Bill. This term is being clarified to identify it includes ''other biodegradable waste'' and to state that waste material does not include unsegregated solid waste.

• *Renewable energy site assessment.* This definition is being revised through editing and presentation to be consistent with the technical report requirements contained in Sections A through C of Appendix B for renewable energy system applications submitted with a total project cost of $200,000 or less.

• *Rural Business Cooperative Service Grant Agreement (Form RD 4280–2) or successor form.* This term is being redefined as ''Grant Agreement'' and is being updated to reflect the new name of the form.

• *Simple payback.* This term is being revised in several ways.

Reference to ''(including REAP grants)'' in several equations is being removed because the phrase is unnecessary.

The calculation of energy saved or replaced is being revised. The applicant is to calculate the actual average annual total energy used in the original building and/or equipment, as applicable, prior to the RES or EEI project over the most recent 36 months of operation or, if in operation less than 36 months, over the length of ownership. Next, the applicant is to calculate the projected average annual total energy that would have been used in the original building and/or equipment, as applicable, for this same 36-month period if the proposed project had been in place over that time period. The difference between these two values for the applicable time period represents the amount of energy saved or replaced. The Agency notes that the value of the price of energy used in the calculation of simple payback is to be calculated for this same 36-month period or period of ownership, if less than 36 months.

The adjustment for energy efficiency equipment based on the ratio of capacity is being removed. However, there may be projects where multiple pieces of equipment are being replaced by one piece of equipment. The applicant must demonstrate in an energy analysis, assessment, or audit, as applicable, that the average annual total energy used by the one piece of equipment is less than the combined average annual total energy used by the multiple pieces of equipment.

The calculation of simple payback for flexible fuel pumps is being revised to specify that only the flexible fuel pump cost, revenue, and expenses are to be included in the calculation. In addition, income is now ''average net income'' and is based on all energy-related revenue streams.

• *Small business.* This term is being revised by removing reference to providing service to rural consumers ''on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district.''

Added Terms

• *Complete application.* This term is being added to clarify the timeframe for when eligible project costs can begin to be incurred.

• *Federal fiscal year.* This term is being added to ensure clarity in implementing the subpart.

• *Energy analysis.* This term is being added because the Agency is proposing to allow for an energy efficiency improvement project with total project costs of $80,000 or less to conduct an energy analysis instead of an energy assessment or an energy audit. In addition, the details of what constitutes an energy analysis have been added to § 4280.119(b)(3)(iii). The Agency notes that an energy analysis covers the same areas as an energy assessment, but will have less detail than an energy assessment, as provided in Appendix A of this subpart.

• *Hybrid.* This term is being added because the program now specifically addresses projects in which more than one renewable technology is proposed.

• *Immediate family.* This term is being added to conform to a proposed change, as discussed later, replacing ''close relative'' with ''immediate family.''

• *Inspector.* This term is being added to clarify who can perform inspections required under the subpart.

• *Retrofitting.* This term is being added because the rule addresses retrofitting as an eligible project purpose.

• *Rural Small Business.* This term is being added to clarify the applicability of certain sections of the rule.

Deleted Terms

The following terms are being deleted because they are already defined in § 4279.2 of this part and the Agency has determined there is no reason for the terms to be defined differently between regulations.

- Borrower.
- Holder.
- Interim financing.
- Lender.
- Participation.
- Promissory note.

The following terms are being deleted because they are no longer used in this subpart.

- Existing business.
- Fair market value of equity in real property.
- Hydropower.
- Large solar, electric.
- Large solar, thermal.
- Large wind system.
- Necessary capital improvement.
- Post-application.
- Pre-commercial technology.
- Qualified party.
- Simplified application.
- Small hydropower.
- Small solar, electric.
- Small solar, thermal.
- Small wind system.
- Spreadsheet.
- Very small business.

Exception Authority (§ 4280.104)

This section is being revised to focus consideration of the application of

requirement or provision on the financial interest of the Federal government when evaluating whether to make an exception.

Review or Appeal Rights (§ 4280.105)

This section is being revised, in part, to conform with recent energy title rulemakings to be simpler and to identify the availability of a review of an Agency decision and, in part, to clarify which parties may appeal an adverse decision associated with a guaranteed loan loss payment and with a combined funding application.

Conflicts of Interest (§ 4280.106)

This section is being revised to clarify and provide examples of conflict of interest situations dealing with the receipt of Federal awards, matching funds, and procurement contracts. In addition, a new paragraph specifically addressing assistance to Agency employees and their relatives and associates has been included. The Agency is adding this provision to provide greater transparency and accountability in government.

Laws That Contain Other Compliance Requirements (§ 4280.108)

Several references have been moved or deleted as follows:

- Reference to equal employment opportunity is being relocated from this section to the Construction Planning and Performing Development section (see § 4280.124(a)(2)).
- Reference to the Equal Credit Opportunity Act at the end of paragraph (a) of this section is being removed because it duplicates reference to it earlier in the paragraph and thus is unnecessary.
- Reference to the Americans with Disabilities Act as a separate, stand alone paragraph was removed because it is adequately covered elsewhere in this section and in the Construction Planning and Performing Development section (see § 4280.124(d)(2)).
- Reference to Executive Order 12898, which addresses the Agency's conduct of a Civil Rights Impact Analysis, is being removed because it is internal Agency policy and as such it is unnecessary to include it in a rule.

With regard to 7 CFR 4280.108(e), Environmental analysis, the Agency is proposing that, if the applicant takes any actions or incurs any obligations that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment prior to the Agency completing the environmental review, such action or obligation ''may'' (rather than ''will'') result in the project being determined by the Agency to be ineligible. This change is not intended to limit any NEPA requirements. Actions taken by an applicant prior to Agency review that have an adverse effect on the environment, would be a basis for the Agency to determine the project ineligible for funding. Further, the Agency is proposing to clarify this provision by changing ''during the time of application or application review'' to ''prior to the Agency completing the environmental review.'' Lastly, because this provision addresses any project's eligibility, it has been moved to the project eligibility section for each program.

General Applicant, Application, and Funding Provisions (§ 4280.110)

Several changes are being proposed for this section. Paragraph (b) is being added to address application submittal. Previously, application windows were identified through the issuance of notices in the **Federal Register**. As proposed, all applications (grants, guaranteed loans, and combination grants and guaranteed loans) may be submitted at any time throughout the year except for energy audit and renewable energy development assistance applications. The Agency will select grant and combination grant and guaranteed loan applications based on the grant application's score and subject to available funding.

All guaranteed loan-only applications will be scored. Applications that are ready for funding and that score at or above the minimum score will be competed on a quarterly basis, with higher scoring applications receiving priority. Applications ready for funding, but that score below the minimum score and all other applications that were not funded will only be competed during the last quarter of the Federal fiscal year.

Paragraph (c) is being added to set limits on the number of applications an applicant can submit each Federal fiscal year. Specifically, an applicant can submit only one application for a renewable energy system project, one application for an energy efficiency improvement project, and one application for a renewable energy system feasibility study project. Thus, for example, an applicant cannot submit applications for two renewable energy system projects in the same Federal fiscal year. This provision clarifies the Agency's intent in implementing the program to provide for a greater distribution of funds by limiting an applicant to one application for each of the three types of projects each Federal fiscal year. An applicant will still, however, be allowed to submit a total of three applications, one for each type of project.

Paragraph (d), currently 7 CFR 4280.116(a)(1), is being clarified to refer to ''types of funding requests'' rather than to ''types of funding applications.'' In addition, the Agency is moving these provisions to this section because they are more appropriately placed in the general section of the rule than in the RES/EEI grant section.

Paragraph (e) is being added to address modifications to applications once they have been submitted to the Agency, how the date of record is affected, and how the Agency will consider the modified application for selection.

In addition to retitling paragraph (f) to ''Incomplete applications,'' the provisions associated with incomplete applications are being clarified.

Paragraph (h) is being added to address provisions common to the technical reports submitted with the application—the level of detail each is to provide; modifications to the technical report prior to the applicant's selection of a final design, equipment vendor, or contractor; and hybrid projects. For the most part, these provisions are the same as found in 7 CFR 4280, subpart B, but have been brought together in this paragraph.

Paragraph (i) addresses technical merit. The Agency will determine the technical merit of all applications submitted under this subpart, except for renewable energy system feasibility study grant applications and energy audit and renewable energy development assistance grant applications.

While projects that are without technical merit are still ineligible, the Agency is proposing to replace scoring the technical merit of a project with a process for determining whether the project has or does not have technical merit. Under the Interim Rule, technical merit is a criterion used to score and rank applications to determine which projects are funded. The Agency has determined based on its experience with REAP applications that this criterion is too subjective and has determined that it is in the best interest of the program not to continue using it to score applications. However, the very nature of REAP is such that only projects that have ''technical merit'' be eligible for funding. Thus, the Agency is proposing to revise the regulation such that each proposed project will be determined by the Agency either to have technical merit or not to have technical merit.

The Agency will make the technical merit determination based on the

information provided in the application, including the technical report whose purpose is to provide the details of the proposed project. The Agency will examine such items in the technical report as prior performance data of the system, experience of the installation team, resource data, and the engineering of the system in making its decision on technical merit.

If the information in the application is insufficient to allow the Agency to make a technical merit determination, the application will be considered incomplete. If the Agency determines that an application is incomplete, it will notify the applicant of the elements that made the application incomplete. The applicant will be given an opportunity to provide the missing information. If the applicant provides the missing information on or before the last applicable application deadline, the Agency will continue considering the application for funding as described in the subpart. However, if the applicant provides the missing information after the last applicable application deadline, the Agency will only consider the application for funding in subsequent funding cycles as described in the subpart.

Paragraph (j) has been added to clarify that all grants awarded under this subpart must be completed within 2 years from the date the Grant Agreement was signed by the Agency unless otherwise approved by the Agency. All grant funds must be returned to the Agency if the grantee does not meet the requirements of the Grant Agreement.

Notifications (§ 4280.111)

Three changes are being made to this section. First, the paragraph addressing ineligible applications was integrated into the paragraph addressing eligibility notifications. Second, reference is being made to lenders to make this section applicable to guaranteed loan applications. Third, paragraph (c), which is titled ''Awards'' is being retitled ''Disposition of applications.'' This change is being made to clarify that this paragraph applies to not only applications selected for award, but to applications that are not selected for award. The Agency is also proposing to add a provision to this paragraph that it will include any applicable appeal or review rights in its notification to applicants whose applications are not funded.

Renewable Energy System and Energy Efficiency Improvements Grants

Applicant Eligibility (§ 4280.112)

This section provides the criteria the Agency will use to determine whether an applicant is eligible to receive an RES or EEI grant under this subpart, including identifying situations in which an applicant will be determined to be ineligible.

Paragraph (b) addresses ownership and control requirements. While a similar provision is found in 7 CFR part 4280, subpart B under project eligibility, the proposed rule clarifies and expands these requirements. It requires ownership and site ownership or control for the project at the time of application and, if an award is made, for the useful life of the project as described in the grant agreement.

Paragraph (c) addresses revenues and expenses. While a similar provision is found in 7 CFR part 4280, subpart B under project eligibility, the proposed rule clarifies and expands these requirements. It requires that the applicant have available at the time of application satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the useful life of the project. In addition, the applicant must control the revenues and expenses of the project, including its operation and maintenance, for which the assistance is sought.

Paragraph (d) is new and clarifies that applicants are required to have the legal authority necessary to apply for and carry out the purpose of the grant. This specific provision has been part of administering the program, but it is not easily identifiable in 7 CFR part 4280, subpart B.

Paragraph (e) is new and clarifies that applicants are required to follow the Universal identifier and SAM requirements of 2 CFR unless exempt under 2 CFR 25.110.

Project Eligibility (§ 4280.113)

This section provides the criteria the Agency will use to determine whether a project is eligible to receive an RES or EEI grant under this subpart. These provisions of the proposed rule are similar to 7 CFR part 4280, subpart B, but there are several differences to note.

With regard to project eligibility, the Agency is proposing several changes. For renewable energy systems, the Agency is clarifying that funds can be used to purchase ''new'' or ''Refurbished'' renewable energy systems. In addition, the Agency is proposing to allow funds to be used to retrofit existing renewable energy systems.

The Agency is proposing to include as an eligible energy efficiency improvement project, the construction of a new energy efficient building only when the building is used for the same purpose, and based on an energy audit or energy assessment, as applicable, it will be more cost effective to construct a new building and will provide more energy savings than improving the existing building.

The Agency is removing pre-commercial technology from being eligible; all projects must now be for commercially available technologies. The Agency is making this change to avoid overlap with the Biorefinery Assistance guaranteed loan program.

The Agency is adding the conditions that must be met for the construction of a new energy efficiency improvement building in order to be an eligible project. Specifically, such construction would be an eligible project only when the building is used for the same purpose, it will be more cost effective to construct a new building, and it will use less energy on an annual basis than improving the existing building. The Agency is adding a new eligibility criterion addressing duplicative grant applications. Specifically, as proposed, if the proposed energy efficiency improvement would duplicate the same energy efficiency improvement that had previously received funds under this subpart, then the proposed improvement is ineligible. For example, an applicant received a grant to replace the windows in a warehouse with more energy efficient windows. Shortly thereafter, the applicant decides to replace the new windows. An application for replacing the new windows would be ineligible for REAP funding.

As noted above, the Agency is relocating the ownership and control and revenue provisions of 7 CFR 4280.113(f) through (h) from the project eligibility section to the applicant eligibility section.

The separate technical feasibility provision is removed because an application has to pass a technical merit review as discussed previously (which technical feasibility is part of) in order to be considered for funding.

RES/EEI Grant Funding (§ 4280.115)

This section addresses four areas associated with grant funding, as summarized below.

Maximum grant assistance (paragraph (a)(3)). While the maximum amount that an individual or entity can receive in a Federal fiscal year is not

changing (it remains at $750,000), the Agency is clarifying that this maximum amount applies to all grant assistance received under this subpart, including energy audit, renewable energy development assistance, and feasibility study grants.

Matching funds (paragraph (b)). The Agency is clarifying that the applicant is responsible for securing the remainder of the total project costs not covered by grant funds rather than just total eligible project costs and modifying the text found in paragraph (b)(2) of this section to clarify that equity raised from the sale of Federal tax credits is an acceptable form of passive third-party contributions.

Eligible project costs (paragraph (c)). The Agency is proposing several changes to the eligible project costs.

In addition to the cost being an ''integral component,'' the Agency is allowing as an alternative that the cost can be ''directly related to and its use and purpose is limited to'' the renewable energy system or energy efficiency improvement.

The Agency is replacing the term ''post-application'' with ''after a Complete Application has been received'' for clarity in determining the eligibility of certain project costs.

With regard to the purchase and installation of equipment, the Agency is removing reference to ''remanufactured'' equipment and relocating the exceptions for agricultural tillage equipment, used equipment, and vehicles to the ineligible project costs section.

The Agency is removing the provision associated with pro-rating eligible project costs based for energy efficiency improvement projects that have a greater capacity than the existing building and/or equipment being replaced. Under the proposed rule, no such pro-rating would be used.

The Agency is clarifying that the permit fees referred to are construction permit fees.

The Agency is clarifying that eligible project costs for professional service fees are those fees incurred for qualified consultants, contractors, installers, and other third-party services.

Reference to energy analyses, energy assessments, energy audits, technical reports, and feasibility studies has been moved to the eligible project costs section for guaranteed loans. These items are no longer considered as eligible project costs for grants. Because these items are needed as part of a complete grant application, costs incurred before the complete application is submitted to the Agency are considered ineligible project costs.

The Agency has relocated from eligible project cost provisions, the construction of a new energy efficiency facility to the project eligibility section.

Ineligible project costs (paragraph (d)). To provide clarity on what costs would not be eligible for funding, the Agency developed a paragraph specifically addressing ineligible project costs.

Grant Applications—General (§ 4280.116)

This is a new section to clarify that under paragraph (a), separate applications are to be submitted for renewable energy system and energy efficiency improvement projects and also only an original application needs to be submitted. Under the current 7 CFR part 4280, subpart B, separate applications for renewable energy system and energy efficiency improvement projects are not discussed and an original and a copy of the application are required.

Paragraph (b) of this section states which section of the rule applies to applications with total project costs of greater than $200,000, applications with total project costs of $200,000 or less (but more than $80,000), and applications with total project costs of $80,000 or less. Lastly, paragraph (c) of this section addresses how the Agency will evaluate each application. This paragraph is very similar to the paragraph (a) of 7 CFR 4280.117, but adds a reference to the technical merit of the project and having complete application documentation.

Grant Applications for Projects With Total Project Costs Greater Than $200,000 (§ 4280.117)

Certifications are being required in place of documentation and some of the forms only need to be submitted at the time of award because they are not needed at the time of application. The Agency is also proposing to remove the provision requiring a Table of Contents with clear pagination and chapter identification.

To clarify their applicability, the Agency is adding a new paragraph (f) to identify the construction planning and performing development provisions that are applicable to these grant applications by cross-referencing § 4280.124.

Grant Applications for Projects With Total Project Costs of $200,000 or Less (§ 4280.118)

This section incorporates the criteria for submitting such applications, which are currently found in 7 CFR 4280.114.

Under paragraph (a), the Agency is proposing that only commercially available projects be eligible for REAP (paragraph (a)(2) of § 4280.118 cross references the requirements of § 4280.113 and more specifically to § 4280.113(b) which requires the project to be ''Commercially Available''). In addition, because the Agency is proposing that all projects awarded grants under REAP be completed within 2 years, the criterion requiring such applicants to complete projects within 2 years is also no longer needed.

The Agency is proposing changes to the content for these applications (see paragraph (b)), including moving forms not needed at the application stage to the award stage.

The primary change being proposed for construction planning and performing development is allowing for small acquisition and construction procedures to be utilized and not requiring the need for applicant to get Agency approval on contracts (see paragraph (c)).

The Agency is proposing a new process that clearly identifies the payment process for projects (see paragraph (d) of this section).

Grant Applications for RES and EEI Projects With Total Project Costs of $80,000 or Less (§ 4280.119)

This section identifies the contents of an application for projects with total project costs of $80,000 or less. A technical report is still required for this application process; however, it can be submitted as a narrative rather than a separate report like under the other two application processes in the proposed rule. Energy efficiency improvement projects applying under this process will have to provide 36 months of data for total energy used and projected and the total cost of the energy as well as projected.

The structure of this section parallels that for applications for projects with total project costs of less than $200,000. Paragraph (a) identifies the criteria for submitting applications for projects with total project costs of $80,000 or less. These criteria are identical to those for submitting applications for projects with total project costs of $200,000 or less, except for the threshold (i.e., $80,000 versus $200,000).

Application content is presented in paragraph (b). In general, the Agency is proposing to simplify the application by requiring the applicant to certify to a number of items (e.g., applicant eligibility, project eligibility) rather than submit information with the application. The following identify specific differences associated with

these applications compared to the applications for the other two tiers:

- Certify that the applicant meets the criteria for submitting a ''$80,000 or less'' application
- Submit a ''unique'' set of certifications covering:
  - Applicant and project eligibility criteria
  - Ability of project to meet is intended purpose
  - Will abide to open and free competition requirements
  - For bioenergy projects, any and all woody biomass feedstock from National forest system land or public lands cannot be used as a higher value wood-based product
  - For flexible fuel pumps, blended liquid transportation fuel is available and there is demand for that fuel in its service area
- Application description, including the financial information, in § 4280.117(b) is not required
- A separate project description and identification of project location is not required
- RES feasibility study (§ 4280.117(d)) does not apply and thus is not required (difference from the ''>$200,000'' applications only)
- Less onerous technical reports from the other two application tiers, including for EEI applicants the submittal of an energy analysis rather than either an energy assessment or energy audit.

Paragraphs (c) and (d) presents the procurement and payment processes, which are the same as for projects with total project costs of $200,000 or less (but more than $80,000).

Scoring Grant Applications (§ 4280.120)

This section identifies the criteria the Agency will use to score each RES and EEI application. The Agency is including a provision that would allow it to modify the scoring through the publication of a Federal Register notice.

Numerous changes have been made to the scoring criteria as summarized in Table 1. Reasons for the changes are discussed following Table 1.

TABLE 1—SUMMARY OF SCORING CRITERIA CHANGES FOR RES/EEI GRANT APPLICATIONS

7 CFR part 4280, subpart B criteria and maximum points	Proposed criteria and maximum points	Summary of changes
1. Quantity of energy replaced, produced or saved, and flexible fuel pumps.	b. Quantity of energy generated or saved per REAP grant dollar requested, and renewable fuel dispensed through flexible fuel pumps (max 25 points).	Replaces this criterion with ''Quantity of energy generated or saved per REAP grant dollar requested, and renewable fuel dispensed through flexible fuel pumps''.
2. Environmental benefits (max 10 points)	a. Environmental benefits (max 5 points)	1. Revises criterion to award points based on positive effects in three areas: resource conservation, public health, and the environment. 2. Decreases points from 10 to 5.
3. Commercial availability (max 10 points)	.....	Removed.
4. Technical merit (max 35 points)	.....	Removes criterion as scoring criterion. Instead, all projects will be assessed on a pass/fail basis for technical merit.
5. Readiness (max 15 points)	c. Readiness (max 25 points)	Increases points from 15 to 25.
6. Small agricultural producer/very small business (max 10 points).	d. Size of agricultural producer or rural small business (max 10 points).	Changes metric for awarding points to size of applicant relative to the Small Business Administration's small business size standards.
7. Simplified application/low cost projects (max 5 points).	.....	Removes criterion.
8. Previous grantees or borrowers (max 5 points).	e. Previous grantees or borrowers (max 10 points).	Increases maximum points from 5 to 10.

- *Quantity of energy replaced, produced or saved, and flexible fuel pumps.* The Agency is replacing this criterion with ''Quantity of energy generated or saved per REAP grant dollar requested, and renewable fuel dispensed through flexible fuel pumps'' based on Office of Inspector General audit recommendation and given that maintaining both criteria would be duplicative.

- *Environmental benefits.* The Agency is revising the method for awarding points under this criterion. Under the Interim Rule, an applicant is required to obtain a letter from an authority within the State supporting the project. While support from the State is viewed as positive, it puts extra burden on the applicant to obtain the letter and puts those applicants that do not get a letter at a disadvantage. In addition, receiving such a letter does not make it a better project. Lastly, under the current guidance it has also been very hard to quantify environmental benefits. Therefore, for these reasons, the Agency is proposing to award points under this criterion based on the applicant providing documentation that the proposed project will have a positive effect on any of the three impact areas: resource conservation, public health, and environment.

- *Commercial availability.* The Agency is removing this criterion because only commercially available technologies are eligible for the program.

- *Technical merit.* The Agency is removing this criterion for scoring purposes because of its subjective nature. Instead, the Agency is proposing to make technical merit an eligibility criterion. Based on the information in the technical report, the Agency will make a determination as to whether a project has technical merit or not. If the Agency determines that a project does not have technical merit, the project will be ineligible for funding.

- *Readiness.* In order to encourage applicants to provide written commitment of matching funds with the application submittal, the Agency is proposing to increase the maximum number of points awarded under this criterion from 15 to 25.

- *Small agricultural producer/very small business.* The Agency is proposing to change the basis for awarding points to size of applicant relative to the Small Business Administration's small business size standards. Under the Interim Rule for

REAP, there are different measurement standards for determining the size of a small agricultural producer and the size of a very small business for awarding of points under this scoring criterion. The new provision will measure each applicant based on the size requirement published by the Small Business Administration. Grantees one-third or less than the SBA size requirement will get full points, while those two-thirds or less of the SBA size requirement will get one-half of the points. The Agency has determined this is a more equitable method for awarding points for this criterion between agricultural producers and rural small businesses.

• *Simplified applications/low cost projects.* The Agency is proposing to remove this criterion because it will set aside funding for grants requesting less than $20,000 and therefore priority points are not needed.

• *Previous grantees or borrowers.* In order to encourage new applicants, the Agency is proposing to increase points awarded under this criterion from 5 to 10. Under the proposed rule, an applicant who has not received a grant in the previous two years will be awarded 5 points, while an applicant that has never received REAP funding will receive 10 points.

Selecting RES and EEI Grants for Award (§ 4280.121)

This is a new section and addresses the process the Agency will use to select applications for awards as summarized below. This section covers the following:

• *Application competitions (paragraphs (a) through (c)).* Paragraphs (a) through (c) describe application competitions and deadline dates to compete for funding. Paragraph (a) describes the process for State competitions, paragraph (b) is dedicated to the grants of $20,000 or less set-aside, and paragraph (c) describes the details for national competitions. In the past, application competitions and deadlines have been published in a **Federal Register** notice on an annual basis. The proposed rule is establishing these dates in the rule to ensure that program delivery is not solely tied to the Federal budgetary process and applications can be accepted year round except for energy audit and renewable energy development assistance applications.

• *Funding selected applications (paragraph (d)).* This paragraph identifies how the Agency will handle an application selected for funding, but for which insufficient funds remain to fund the application.

• *Disposition of ranked applications not funded (paragraph (f)).* This paragraph identifies how long an application will be held by the Agency and for which competitions the application may compete for funds as described in paragraphs (a) through (c) of this section. Disposition of ranked applications not funded was never discussed in 7 CFR part 4280, subpart B, and the Agency wants to ensure that applicants are aware of their chances for funding. Thus, this paragraph was added for clarity.

• *Commencement of the project (paragraph (g)).* Applicants are put on notice that they assume all risks if they purchase the technology proposed or start construction of the proposed project after the application has been received by the Agency, but prior to award announcement.

Awarding and Administering RES and EEI Grants (§ 4280.122)

This section addresses the process the Agency will use to award and administer grants. This section places in one spot in the rule, several provisions that are currently found in various places of 7 CFR part 4280, subpart B. By doing so, the proposed rule provides a clearer presentation of this process.

Servicing RES and EEI Grants (§ 4280.123)

This section addresses the procedures the Agency will use to service RES and EEI grants. The proposed section expands upon the provisions found in § 4280.121 and includes several provisions found in other portions of 7 CFR part 4280, subpart B.

Many of the provisions are being incorporated from the grant agreement into the text of the regulation. Some of the provisions (e.g., programmatic changes, project monitoring, transfer of obligations, and grant close-out) are similar to provisions developed by the Agency or as cited in the Department regulations when it was considering consolidating various grant programs into a single rule.

The renewable energy system and energy efficiency improvement grant outcome project performance reporting requirements in this section are very similar to those found in 7 CFR part 4280, subpart B, with the differences found in the report contents.

For the renewable energy system report, the Agency is proposing to drop from the report the documentation of any identified health and/or sanitation problem that has been solved because the Agency has determined that it provides little benefit. In its place, the Agency is proposing to add the type of technology to the report. Two other changes are to clarify that the actual amount of energy generated will be reported as an ''annual'' amount and to identify how that amount is to be calculated.

For energy efficiency improvement projects, the Agency is proposing one substantive change. The Agency is adding to the report the actual jobs created or saved. While creating or saving jobs is being added to the reporting requirements, the Agency does not expect every energy efficiency project to have an impact on employment. Most energy efficiency projects may report zero jobs created or saved, because the impact of the grant was to save the applicant money on energy bills and improve their profitability.

Construction Planning and Performing Development (§ 4280.124)

This section replaces the current construction planning and performing development provisions found in 7 CFR 4280.119. While this section is organized differently from the current corresponding section, it covers many of the same subjects.

The primary change is the provision of exceptions to the surety requirements for: (1) Small acquisition and construction procedures, (2) equipment purchases and installation-only projects of more than $200,000 if two conditions are met, and (3) other construction projects that have only one contractor performing work.

There are also numerous substantive changes associated with the provisions for technical services for projects with total project costs greater than $400,000. The proposed rule clarifies that technical services may be provided by the applicant's 'in-house' professional engineers or contracted professional engineers. In addition, all contracts for design services require Agency concurrence. Services performed by engineers may only be done by engineers licensed in the state in which the facility is located.

Further, the Agency is proposing an exemption from these requirements for projects with total project costs greater than $400,000 if State or Tribal law does not require the use of a licensed professional engineer and if the project is not complex and can be completed to meet the requirements of the program without the services of a licensed professional engineer. An example to demonstrate this exemption would be a large equipment purchase that does not require changes to a structure or require State-approved plans to be installed.

RES and EEI Guaranteed Loans

Compliance With §§ 4279.29 Through 4279.99 (§ 4280.125)

7 CFR part 4280, subpart B required compliance with the Business and Industry (B&I) provisions found in §§ 4279.29 through 4279.99, but contained a number of exceptions. Because there is no need to maintain a distinction for loans guaranteed under REAP, the proposed rule follows the provisions of the B&I regulations, with one exception. The one exception is associated with § 4279.71, because REAP does not apply to public bodies and non-profit corporations.

One of the distinctions being removed is the current REAP provision that excludes mortgage companies that are part of a bank holding company from being an eligible lender. To the extent the B&I provisions allow such entities to be an eligible lender, so would REAP.

Guarantee Fee/Annual Renewal Fee (§ 4280.126)

The Agency is proposing to conform the REAP guarantee fee and annual renewable fee provisions (found in 7 CFR 4280.127) to those found in the B&I rule. The one exception is that the B&I provisions for receiving a reduced guarantee fee would not apply to REAP guaranteed loans. Instead, the Agency is proposing to announce the conditions, if any, in a **Federal Register** notice that would enable a reduced guarantee fee for REAP guaranteed loans.

Borrower Eligibility (§ 4280.127)

The Agency is proposing that eligible borrowers meet the same eligibility as RES/EEI grant applicants. However, some of the applicant requirements have been moved from other places in 7 CFR part 4280, subpart B into proposed § 4280.112 and those that are applicable to borrowers are repeated in this section (rather than cross-referencing back to § 4280.112).

Project Eligibility (§ 4280.128)

The basic eligibility requirements for projects are the same as for RES/EEI grants, but, as noted earlier in the preamble, some of those requirements have changed. In addition, the Agency is proposing to allow loans for the purchase of a qualifying existing renewable energy system to be guaranteed. This provision would replace 7 CFR 4280, subpart B's provision for ''necessary capital improvements to an existing renewable energy system.''

Guaranteed Loan Funding (§ 4280.129)

The Agency is proposing several changes to these provisions for guaranteed loan funding.

The Agency is identifying project costs that would be ineligible for payment using the guaranteed loan. These are consistent with the items identified as ineligible for payment under the RES/EEI grant provisions, except that construction or equipment costs that would be incurred regardless of the installation of a renewable energy system or energy efficiency improvement may be included as an eligible project cost for guaranteed loans. In addition, the Agency is including as ineligible project costs, paragraph (p) from the B&I provisions at 7 CFR 4279.114, which addresses loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute.

The Agency is also proposing to refer to eligible project costs that are included under grants (7 CFR 4280.115(c)) for guaranteed loans as well as the following items:

- Working capital;
- Land acquisition;
- Routine lender fees; and
- Energy analyses, energy assessments, energy audits, technical reports, business plans, and feasibility studies completed and acceptable to the Agency, if no portion was financed by any other Federal or State grant or payment assistance, including, but not limited to, a REAP energy analysis, assessment, or audit, feasibility study, or renewable energy development assistance grant.

The Agency is proposing that these four sets of eligible costs be ''capped'' at no more than 5 percent of the guaranteed loan amount. This cap is intended to ensure that these expenses do not inadvertently or otherwise consume a substantial share of funds for the actual project.

Loan Processing (§ 4280.130)

In the proposed rule, the Agency is proposing to reduce the number of exceptions between REAP and B&I loan guarantees. The following paragraphs summarize the proposed changes.

a. *Interest rates.* In the proposed rule, the interest rate provisions for B&I guaranteed loans would apply in their entirety to REAP guaranteed loans. This would remove some changes in the determination of interest rates, but the Agency has determined that the B&I provisions are sufficient and any difference between the two programs in unnecessary.

b. *Loan terms.* In the proposed rule, the loan term provisions for B&I guaranteed loans would apply in their entirety to REAP guaranteed loans. This would change the loan term for machinery and equipment and eliminate a few specific requirements, but the Agency has determined that the B&I provisions are sufficient and any difference between the two programs in unnecessary.

c. *Insurance requirements.* The Agency is proposing to make the insurance requirement identical to those in the B&I program. 7 CFR part 4280, subpart B requires that the coverage be maintained for the life of the loan unless this requirement is waived or modified by the Agency. The Agency has determined that the provisions of the B&I program are sufficient and that this requirement is unnecessary.

d. *Appraisals.* The Agency has determined that the additional appraisal requirements found in 7 CFR part 4280, subpart B do not need to be maintained for the program. Therefore, the Agency is proposing that REAP appraisals be conducted in accordance with the B&I appraisal provisions.

e. *Construction planning and performing development.* The Interim Rule provides specific provisions for construction planning and performing development (see 7 CFR 4280.119). Under the proposed rule, the Agency is proposing that 7 CFR 4279.156 applies to guaranteed loan projects under this subpart.

Credit Quality (§ 4280.131)

The Agency is proposing to make the credit quality requirements identical to those in the B&I program with the exception of equity. In general, with the exception of equity, conforming the REAP credit quality provisions to those in the B&I program does not create substantive changes from 7 CFR part 4280, subpart B.

With regard to the proposed equity provisions, there are substantive differences from the 7 CFR part 4280, subpart B equity provisions and the B&I guaranteed loan program equity provisions. There is no longer a distinction between the size of the loan guarantee for REAP equity requirements. For example, the cash equity injection is specified at 25 percent for all loan guarantees. The Agency is also proposing to eliminate the provision in 7 CFR 4280, subpart B that allows the fair market value of equity in real property that is to be pledged as collateral for the loan to be substituted for any portion of the cash equity requirement.

Financial Statements (§ 4280.132)

The proposed rule would adopt, in their entirety, the financial statement provisions found in the B&I program, except that, due to a difference in eligible applicants, the proposed rule would allow agricultural producers the option of providing financial information in the manner that is generally required by commercial lenders. The Agency notes that the financial information requested in 7 CFR 4280.140(a) is still being requested under the proposed rule, but in a different provision.

Personal and Corporate Guarantees (§ 4280.134)

Except for passive investors, the Agency is proposing to allow all of § 4279.149 to apply to this subpart. Currently, the 7 CFR part 4280, subpart B adopts only § 4279.149(a).

Scoring RES and EEI Guaranteed Loan Only Applications (§ 4280.135)

The Agency is proposing this new section to clarify how guaranteed loan-only applications will be scored. Specifically, these applications will be scored using the same criteria as for RES and EEI grants, but with the calculations, as applicable, to be made using guaranteed loan amounts and not grant amounts. This section also identifies that the Agency will establish a minimum score each year to assist in funding higher priority projects. The minimum score will also be used to determine whether or not an application is competed in each quarter. Lastly, the Agency will notify applicants whose applications are below the minimum score.

Application and Documentation (§ 4280.137)

A number of changes are being proposed for guaranteed loan applications, as discussed below.

a. *Applications for guaranteed loan requests greater than $600,000.*

To provide flexibility for the applicant, the Agency is proposing to remove the requirement that the application be ''organized pursuant to a Table of Contents format in a chapter format presented in the order shown'' and provision of a project summary.

The application content still mirrors that required for RES/EEI grants and, thus, the changes described earlier in this proposed rule for those applications would apply to these guaranteed loan applications as well.

Several substantive changes were made to the lender forms, certifications, and agreements that are to be submitted with the application, as follows:

- With regard to appraisals, the Agency is proposing to add that its approval in the form of a Conditional Commitment may be issued subject to receipt of adequate appraisals.
- With regard to historical financial statements, the Agency is proposing to remove reference to Generally Accepted Accounting Principles and adding a provision to allow agricultural producers to submit these statements in the format that is generally required by commercial agricultural lenders.
- The Agency is proposing to remove reference to the business-level feasibility study because the feasibility study is required through a cross-reference to the provisions for grant applications.
- The Agency is proposing to remove the requirement for certification by the lender that it has completed a comprehensive written analysis of the proposal. This certification duplicates the requirement to submit the lender's complete comprehensive written analysis.
- With regard to the certification by the lender that the loan is for authorized purposes, the Agency is proposing to remove the phrase ''with technical merit.''

b. *Applications for guaranteed loan requests of $600,000 or less.*

The Agency is proposing to remove the requirement that the application be ''organized pursuant to a Table of Contents format in a chapter format presented.''

The application content will vary for these projects depending on the total project cost for the proposed project. If the total project cost is more than $200,000, the application would contain the information specified for RES/EEI grant applications of similar size. If the total project cost is $200,000 or less, the application would contain the information specified for RES/EEI grant applications of similar size.

Changes in the application content for these applications parallel those identified earlier in this proposed rule for RES/EEI grant applications.

With regard to forms, certifications, and agreements, the Agency is proposing to require the lender to submit the appraisal rather than keep it on file and to submit the certification by the lender that the borrower is eligible, the loan is for authorized purposes, and there is a reasonable assurance of repayment.

Evaluation of RES and EEI Guaranteed Loan Applications (§ 4280.138)

The Agency is proposing to modify 7 CFR part 4280, subpart B provisions for application evaluation (see 7 CFR 4280.129) in several ways.

The Agency is proposing to evaluate applicant and project eligibility using the procedures specified in 7 CFR 4279.165, except that the applicant and project eligibility criteria for REAP will be used.

The Agency has moved the provisions for technical merit determination (7 CFR 4280.129(b)) to a general section of the rule. One change being proposed is that the interest rate on the loan would not be used as a scoring criterion.

Lastly, the Agency is removing the evaluation criteria from 7 CFR 4280.129(c) and including the revised criteria in § 4280.135, as discussed earlier.

Loan Approval and Obligation of Funds (7 CFR 4280.139)

The Agency has determined that a separate provision for loan approval and obligation of funds in 7 CFR part 4280, subpart B is not required.

Selection of RES and EEI Guaranteed Loan Only Applications (§ 4280.139)

This is a new section that contains the procedures to be used for competing guaranteed loan only applications as has been described earlier. The procedures in this section apply only to guaranteed loan only applications. The process and procedures for guaranteed loan applications that are part of a combination funding request are covered under § 4280.165.

Conditions Precedent to the Issuance of the Loan Note Guarantee (§ 4280.142)

The Agency is proposing to conform the REAP provisions to the B&I provisions with two exceptions, which are: that all development must have been performed at a steady state operating level in accordance with the technical requirements and, when applicable, a copy of the executed power purchase agreement must be provided to the Agency before the Loan Note Guarantee can be issued.

Servicing Guaranteed Loans (§ 4280.152)

With two exceptions, the Agency is proposing that REAP guaranteed loans be serviced in accordance with the servicing provisions for B&I guaranteed loans. In general, this results in few changes, because 7 CFR part 4280, subpart B already cross-references most of the B&I servicing regulations with few changes.

The two remaining exceptions pertain to borrowers being determined to be eligible borrowers under the REAP regulation when they are involved in a

transfer and assumption and to loans providing additional funds in connection with a transfer and assumption must be considered as new loan application under the REAP regulation and would compete against other applications received for funding consideration in that competition cycle for the fiscal year, provided there is sufficient budget authority available to fund the project.

Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements

Changes being proposed for applications for renewable energy systems and energy efficiency improvement projects seeking combined funding are summarized below.

- Clarifying that the grant portion of the combined funding request shall not exceed 25 percent of total eligible project costs.
- Clarifying what the contents of the guaranteed loan application are if the guaranteed loan request is greater than $600,000 or is less than or equal to $600,000.
- Clarifying what needs to be submitted when both applications would contain the same documentation, form, or certification.
- Requiring that the grant portion of the funding request must be at least $1,500 for energy efficiency improvement projects and at least $2,500 for renewable energy system projects.
- Identifying when the System for Awards Management (SAM) number and expiration date must be submitted.
- Adding a provision to identify how combined funding applications will be handled if they are ranked, but not funded.
- Adding a provision indicating that compliance reviews will be conducted.
- Revising the process for evaluating combined funding requests to refer only to the grant procedures.

Renewable Energy System Feasibility Study Grants

Changes being proposed for renewable energy system feasibility study grants are summarized below.

General Provisions (§ 4280.169)

The Agency is proposing to add a provision that would make a feasibility study application ineligible if the applicant proposes to conduct any portion of the feasibility study. In other words, the feasibility study must be conducted entirely by entities other than the applicant.

Applicant Eligibility (§ 4280.170)

In addition to make a few clarifying changes, the Agency is proposing to add new conditions, which would make this set of applicant eligibility requirements consistent with the other grant programs in REAP. These four provisions are:

- In lieu of being the prospective owner of the RES project, the applicant has the option of being the prospective controller of the site for the useful life of the property on which the RES would be placed; and
- The applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.
- The applicant is required to follow the Universal identifier and the SAM requirements of 2 CFR unless exempt under 2 CFR 25.110.

Eligibility of RES Projects for Feasibility Study Grants (§ 4280.171)

In addition to several clarifications, the Agency is also proposing two substantive changes to this section.

The Agency is removing the provision that would allow the technology to be a ''pre-commercial'' technology to qualify. This change is consistent with the overall proposed change to RES project eligibility requirements as stated earlier in this Notice.

The Agency is adding a provision cautioning the applicant from taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction, because taking any such actions or incurring any such obligations could result in project ineligibility.

Application Eligibility Provisions

While the proposed rule would no longer have this section, its provisions have been incorporated elsewhere in the rule. There is one change, however, associated with the 7 CFR part 4280, subpart B requirement prohibiting a feasibility study application being submitted in the same Federal fiscal year that a renewable energy system application is submitted and vice-versa. This requirement is being replaced with one that states: ''An applicant can apply for only one Renewable Energy System project, one Energy Efficiency Improvement project, and one Feasibility Study project under this subpart per Federal fiscal year.'' This could, theoretically, allow an applicant to submit a feasibility study application and a renewable energy system application for the same renewable energy system in the same Federal fiscal year.

Grant Funding for RES Feasibility Studies (§ 4280.173)

Several substantive changes are being proposed for this section.

The Agency is proposing to increase the maximum amount of grant funds from $50,000 to $100,000, but still require the lesser of the $100,000 or 25 percent of the total eligible costs.

The Agency is proposing to revise the list of items that illustrate what can be considered as eligible projects costs as follows:

- Payment of services to qualified consultants to perform the evaluations needed for the feasibility study and to complete the feasibility study; and
- Other studies or assessments to evaluate the economic, technical, market, financial, and management feasibility of the renewable energy system that are needed to complete the feasibility study (e.g., resource assessment, transmission study, or environmental study).

The reference to resource assessment, transmission study, and environmental study in 7 CFR part 4280, subpart B has been incorporated into the second item describing eligible project costs.

The Agency is proposing to add two new ineligible project costs: preparing the application package and funding of political or lobbying activities. These two new ineligible project costs are consistent with the other grant provisions.

The provision concerning the requirement to expend the grant funds within 2 years still applies to feasibility study grants, but has been relocated to the General section of the rule (see proposed § 4280.110(j)).

Feasibility Study Grant Applications—Content (§ 4280.176)

In addition to several clarifying and conforming edits, the following substantive changes are being proposed.

The provision requiring a Table of Contents with clear pagination and chapter identification is being removed.

The requirement to submit a copy of legal organizational documents is being removed.

Applicants would now identify the primary NAICS code applicable to their operation, if known, or a description of their operation in sufficient detail for the Agency to determine the applicable primary NAICS code.

Applicants are now certifying that they are legal entities in good standing, if applicable, and operating in accordance with the laws of the state(s) in which the applicants have a place of business.

Removed from the proposed scope of work (referred to in 7 CFR part 4280,

subpart B as the proposed work plan) is the requirement to submit a description of the feasibility study to be conducted. In addition, reference to the applicant requiring those conducting the feasibility study to consider and document within the feasibility study the important environmental factors and alternatives is being removed because such consideration is adequately covered elsewhere in the rule. The changes to the paragraphs concerning the experience of the qualified consultants and the source and amount of matching funds are clarification in nature, with emphasis on submitting written commitments in part so that the Agency can score the application.

The submittal of the applicant's DUNS number is removed because it is already required on Standard Form SF–424, ''Application for Federal Assistance.''

With regard to the financial information, the Agency is only requesting a certification on financial items specific to rural small businesses and agricultural producers. This information is needed for scoring purposes and rather than having an applicant submit financial statements, the Agency will accept a certification on the applicable financial items.

Evaluation of Feasibility Study Grant Applications (§ 4280.177)

The Agency has determined that the process for evaluating feasibility study grant applications is no different than the process it will use to evaluate RES/EEI grant applications. Therefore, rather than repeating that process, as was done in 7 CFR part 4280, subpart B, the Agency is proposing to cross-reference the RES/EEI grant application process. The one difference is that a technical merit determination is not applicable to feasibility study grant applications.

Scoring Feasibility Study Grant Applications (§ 4280.178)

The Agency is proposing several substantive changes to how it will score feasibility study grant applications. These changes are summarized in Table 2.

TABLE 2—SUMMARY OF SCORING CRITERIA CHANGES FOR RES FEASIBILITY STUDY GRANT APPLICATIONS

7 CFR part 4280, subpart B	Proposed change(s)
Energy replacement or generation	Remove as a scoring criterion.
Commitment of funds	Increase maximum points from 10 to 25. Written commitments are required in order to obtain points. Distribution of points is changed.
Designation as a small agricultural producer or rural small business	Criterion changed to size of agricultural producer or rural small business. Points reduced from 20 to 10. Points awarded on basis of relative size of the applicant to SBA size standards for the applicant's applicable NAICS code.
Experience and qualifications	Points increased from 15 to 25. Distribution of points changed.
Size of grant request	Dollar thresholds doubled for determining points awarded.
Previous grantees and borrowers	New criterion for ''Previous grantees and borrowers''. Maximum 10 points. Consistent with change made in RES/EEI grant scoring.
Resources to implement project	Removed.

Selecting Feasibility Study Grant Applications for Award (§ 4280.179)

The Agency is proposing to revamp the process it will use to select feasibility study applications for award. While higher scoring applications will still receive preference, the Agency is proposing to accept applications throughout the year, with two competitions held. The first competition would be for those complete and eligible applications received by November 30; and the second, for those received by May 31. All applications would be eligible for two rounds of competitions, which could result in an application being competed across two Federal fiscal years (i.e., first competed in the May 31 competition and then again in the November 30 competition).

The Agency is revising one of the provisions associated with funding selected applications by requiring that the applicant provide the remaining total funds needs to complete the project in situations in which the applicant agrees to lower its grant request in order to be awarded the grant. This replaces the current provision that the Agency must determine the project is financially feasible at the lower amount.

The Agency is also proposing to add a new provision that puts the applicant on notice that the applicant assumes all risk if the choice is made to purchase the technology proposed or start construction of the project to be financed in the grant application after the complete application has been received by the Agency.

Actions Prior to Grant Closing (7 CFR 4280.180)

The Agency is proposing to move the two provisions in this section to new locations within the proposed rule. The first paragraph concerning environmental assessment is covered in the proposed rule at § 4280.108(c). The second paragraph concerning evidence of funds is covered in the proposed rule at § 4280.181, which cross references § 4280.122.

Awarding and Administering Feasibility Study Grants (§ 4280.181)

The Agency has determined that, with two exceptions, the same process for awarding and administering RES/EEI grants is applicable to feasibility study grants and that there is no reason to repeat those provisions. Thus, this section has been modified to refer back to the corresponding RES/EEI grant section.

The two exceptions noted in the previous paragraph are:

- the insurance requirements in § 4280.122(b) does not apply unless equipment is purchased, and
- the power purchase agreement specified in § 4280.122(e) does not apply.

Servicing Feasibility Study Grants (§ 4280.182)

The Agency has determined that, with a few exceptions and additions, the same process for servicing RES/EEI grants is applicable to feasibility study grants and that there is no reason to

repeat those provisions. Thus, this section has been modified to refer back to the corresponding RES/EEI grant section.

The exceptions noted in the previous paragraph are:

- Feasibility study grant funds are to be expended on a pro rata basis with matching funds;
- Form SF–270, ''Request for Advancement or Reimbursement,'' is to be used;
- The final 10 percent of grant funds will be held back until an acceptable feasibility study has been submitted;
- Upon completion of the project, the feasibility study acceptable to the Agency and Form SF–270 are to be submitted; and
- Outcome project performance reports are to be submitted beginning the first full year after completion of the feasibility study.

The Agency notes that it is proposing one change to the project performance report. This change is to add a discussion, when applicable, of why the renewable energy system is not underway.

Energy Audit and Renewable Energy Development Assistance Grants

Changes being proposed for energy audit and renewable energy development assistance grants are summarized below.

Applicant Eligibility (§ 4280.186)

Two substantive changes are being proposed to this section.

The Agency is proposing to remove the option of allowing an applicant to ''obtain'' the legal authority necessary such that all applicants must have the necessary legally authority at the time of application.

Currently, 7 CFR part 4280, subpart B requires that this legal authority is necessary ''to carry out the purpose of the grant.'' The Agency is proposing an additional requirement—that the applicant has the legal authority necessary to ''apply for the grant'' as well.

Project Eligibility (§ 4280.187)

The Agency is proposing several clarifications to this section, including removing the text identifying what constitutes an energy audit, because that material is covered in Section B of Appendix A of this subpart. In addition to these clarifications, the Agency is proposing one substantive change. As it is proposing to do for the RES feasibility study grants, the Agency is adding a provision cautioning the applicant from taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction, because taking any such actions or incurring any such obligations could result in project ineligibility.

Grant Funding for Energy Audit and Renewable Energy Development Assistance (§ 4280.188)

The proposed changes to the paragraph on eligible project costs are clarification-type changes, including removing unnecessary examples. One example is replacing the term ''administrative expenses'' with ''expenses charged as a direct cost or as an indirect cost * * * for administering the grant.''

With regard to ineligible project costs, the Agency is proposing to add as an identified ineligible project cost, any goods or services provided by a person or entity that has a conflict of interest. The Agency is also proposing to add the leasing of equipment as an ineligible project cost. The current provision associated with the payment of costs incurred prior to the application date was removed from the list of ineligible project costs. The Agency has determined that it is unnecessarily duplicative of the provision that limits eligible project costs to only those costs that are incurred after a complete application has been received by the Agency.

In addition, the Agency is proposing to allow a grantee to use program income to further the objectives of their project or energy audit services offered during the grant period in accordance with Department regulations.

Energy Audit/Renewable Energy Development Assistance Grant Applications—Content (§ 4280.190)

In addition to several clarifying and conforming edits, the following substantive changes are being proposed.

The Agency is proposing that an applicant may only submit one energy audit (EA) grant application and one renewable energy development assistance (REDA) grant application each Federal fiscal year and that combination applications (one in which an applicant proposed both EA and REDA) will not be accepted. The Agency is proposing to drop several items from the application as follows.

- A copy of the applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant (7 CFR 4280.190(d)).
- The Executive Summary (7 CFR 4280.190(e)(1)).
- The itemized budget (7 CFR 4280.190(e)(4)).
- The narrative addressing the applicant's resources, including personnel, finances, and technology, to complete what is proposed (7 CFR 4280.190(e)(7), although the applicant is still required to demonstrate that it has sufficient resources to complete all projects if the project is located in multiple states.
- The most recent financial audit of the applicant, or subdivision thereof, that will be performing the project (7 CFR 4280.190(f)).
- The applicant's DUNS number (7 CFR 4280.190(g)), because it is contained in Standard Form SF–424.
- Dropping the ''using State and Federal support'' provision in 7 CFR 4280.190(e)(6)(iii) when describing the applicant's experience, resulting in a broader discussion.

The Agency is proposing to add several items to the application as follows.

- Certification that the applicant is a legal entity in good standing (as applicable) and operating in accordance with the laws of the state(s) where the applicant has a place of business.
- A description of the goals of the project.
- Identification of the specific needs for the service area and the target audience to be served.
- The name and contact information, if available, for those that will be served by the project.
- Identification of the specific needs for the service area and the target audience to be served.
- Discussing whether the applicant has any existing programs that can demonstrate the achievement of energy savings or energy generation with the agricultural producers and/or rural small businesses the applicant has served.
- If the applicant has received one or more awards within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, describing that achievement.

The Agency is proposing to revise several of the requirements, including:

- Consolidating provisions associated with the timeline and schedule for the project.
- Consolidating the requirements associated with outreach (7 CFR 4280.190(e)(9)) into a more general description of what is being requested.

Evaluation of EA and REDA Grant Applications (§ 4280.191)

The Agency has determined that the process for evaluating energy audit and REDA grant applications is no different than the process it will use to evaluate RES/EEI grant applications. Therefore, the Agency is proposing to cross-reference the RES/EEI grant application process. The one difference is that a technical merit determination is not applicable to either EA or REDA grant applications.

Scoring EA and REDA Grant Applications (§ 4280.192)

The Agency is proposing several substantive changes to how it will score energy audit and REDA grant applications. These changes are summarized in Table 3.

TABLE 3—SUMMARY OF SCORING CRITERIA CHANGES FOR ENERGY AUDIT AND RENEWABLE ENERGY DEVELOPMENT ASSISTANCE GRANT APPLICATIONS

Interim rule	Proposed change(s)
Project proposal	Remove as a scoring criterion.
Use of grant funds for administrative expenses	Remove as a scoring criterion.
Applicant's organizational experience in completing proposed activity	Changed title of scoring criterion. Increased maximum points from 15 to 25. Adjusted distribution of points.
Geographic scope of project	Points increased from 10 to 20. Adjusted distribution of points.
Number of agricultural producers/rural small businesses to be served	Points increased from 15 to 20. Distribution of points changed. Added a new metric to receive an additional 10 points if the applicant provides a list of ultimate recipients, including their name and contact information, that are ready to be assisted.
Potential to produce energy savings and its attending environmental benefits.	Points decreases from 25 to 10. Revised distribution and how points will be awarded.
Marketing and outreach plan	Points decreased from 10 to 5.
Level of commitment of other funds for the project	Increased points from 5 to 20. Revised distribution and how points will be awarded.

Selecting EA and REDA Grant Applications for Award (§ 4280.193)

The Agency is proposing several substantive changes to this section.

The Agency is proposing a single competition for all complete applications received by January 31 of each year.

In selecting applications for funding, if two or more applications score the same and if remaining funds are insufficient to fund each application, the Agency is proposing to distribute the remaining funds to each such application on a pro-rata basis. While the Agency is proposing to continue the provision that unfunded applications will not be carried forward into the next Federal fiscal year, the Agency is adjusting the language to make this clear (currently the rule only refers to not carrying unfunded applications forward into Fiscal Year 2012).

Actions Prior to Grant Closing

The Agency is proposing to remove 7 CFR 4280.194.

Awarding and Administering EA and REDA Grants (§ 4280.195)

The Agency has determined that, with three exceptions, the same process for awarding and administering RES/EEI grants is applicable to energy audit and REDA grants and that there is no reason to repeat those provisions. Thus, this section has been modified to refer back to the corresponding RES/EEI grant section.

The three exceptions noted in the previous paragraph are:

- The insurance requirements in § 4280.122(b) do not apply. Instead, the Agency is proposing that the grantee must provide satisfactory evidence to the Agency that all officers of grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the grantee.
- Form RD 400–1, ''Equal Opportunity Agreement,'' specified in § 4280.122(c)(6) is not required.
- The power purchase agreement specified in § 4280.122(h) does not apply.

Servicing EA and REDA Grants (§ 4280.196)

The Agency has determined that, with a few exceptions and additions, the same process for servicing RES/EEI grants is applicable to energy audit and REDA grants and that there is no reason to repeat those provisions. Thus, this section has been modified to refer back to the corresponding RES/EEI grant section.

The exceptions noted in the previous paragraph are:

- Grant disbursement;
- Semi-annual reports;
- Final performance report; and
- Outcome project performance reports (referred to in 7 CFR part 4280, subpart B as Final Status Reports.)

The Agency is proposing to remove the requirement to identify the percentage of financial resources expended on contractors for the semi-annual and final performance reports.

III. Request for Comments

The Agency is interested in receiving comments on all aspects of the proposed rule. Areas in which the Agency is seeking specific comments are identified below. All comments should be submitted as indicated in the **ADDRESSES** section of this preamble. In addition, all written comments received under the REAP interim rule that was published in the **Federal Register** on April 14, 2011 (76 FR 21110) will be considered along with any comments received under this proposed rule. The Agency will address all written comments in a final rule in the **Federal Register**.

a. The Agency is proposing to allow projects with total project costs of no more than $200,000 to submit applications that contain less documentation. The Agency is requesting comment on this threshold as to whether it is at an appropriate level. If you believe that the level should be different, please identify your suggested level and provide your rationale.

b. The Agency is proposing to allow projects with total project costs of no

more than $80,000 to submit applications that contain less documentation. The Agency is requesting comment on this threshold as to whether it is at an appropriate level. If you believe that the level should be different, please identify your suggested level and provide your rationale.

c. The Agency is seeking comment on the definition of small business. This definition has changed since the original rule was developed as the Section 9006 program. The Agency is interested in alternative definitions that would simplify the identification of small businesses. Please be sure to provide your rationale.

d. As proposed, the maximum grant that would be made for a renewable energy system feasibility study is $100,000. The Agency is interested in receiving comments on the appropriateness of this limit. If you believe that the level should be different, please identify your suggested level and provide your rationale.

e. The Agency is proposing to award points for flexible fuel pumps based on the average annual gallons of renewable fuel estimated to be sold over the first two years by the pumps per grant dollar requested. The Agency is seeking comment on this metric. For example, to what extent would this metric be a good selection criterion? The Agency is also seeking suggestions for alternative metrics. Please be sure to be specific in your comments and suggestions and provide your rationale.

f. The Agency is considering replacing the current cash equity requirement with a minimum of 25 percent tangible balance sheet equity (or a maximum debt-to-tangible net worth ratio of 3:1). Please comment on this consideration, including pros and cons on each metric (i.e. cash equity, tangible balance sheet equity) and your suggestions on the level of debt-to-tangible net worth ratio. In addition, the Agency acknowledges that Federal and State grants can be recorded differently on the balance sheet and how this can impact tangible balance sheet equity in various ways. This should also be a consideration when making comments on the proposed cash equity requirement change. Please be sure to provide your rationale for your position.

g. The Agency is seeking to encourage greater use of REAP guaranteed loans. The Agency is interested in other possible provisions to expand the use of the guaranteed loan only applications under REAP. To make informed decisions in this regard, the Agency needs a better understanding of specific rule provisions that affect the decision to use or not use REAP guaranteed loans.

For any suggested changes to the rule that you believe will encourage more guaranteed loan only applications, please be sure to provide your rationale/basis for each suggested change. An important consideration for the Agency in making any change is the potential effect on increasing the risk of default and thus increasing the subsidy rate (which would reduce the level of funding that the Agency could use in making loan guarantees). Therefore, please be sure to address this issue and, to the extent possible, suggest ways that could mitigate increases in risk.

h. As noted in the preamble to this rule, the Agency is proposing to compete guaranteed-loan only applications on a quarterly basis. The Agency is specifically seeking comment on the frequency with which guaranteed-loan only applications are competed. Please comment on how the frequency of competition cycles such as monthly, semi-annually, and annually would meet the needs of lenders and borrowers better than quarterly competitions. Please be specific in your comments and provide your rationale.

i. The Agency is considering issuing the REAP Loan Note Guarantee prior to construction for technologies that demonstrate lower risk to the government. The Agency is interested in receiving comments on the appropriateness of this action and would like to receive suggestions on what type of technologies should be considered. Please be sure to be specific in your comments and provide your rationale.

j. The Agency is seeking comment on how a multi-farm, community digester project could be developed based upon the requirements contained in this proposed rule. Please be sure to be specific in your comments and provide your rationale.

k. The current REAP regulation allows the State Director or the Administrator to award points to an application that is ''for an under-represented technology'' (see § 4280.120(g)). Under Renewable Energy Systems, there are different categories or technologies: wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal, hydroelectric source, or hydrogen derived from one of these sources. Energy efficiency only has one category.

The Agency is considering revising how it awards points for the ''under-represented technology'' provision for EEI technology. For example, looking at the number of prior lighting project awards compared to the number of prior grain dryer or poultry house project awards and awarding State Director or Administrator points to those projects that are under-represented. To this end, the Agency is seeking comments on the following questions. In all cases, please provide your rationale to support your comments.

- For energy efficiency improvement projects, how would you suggest subdividing EEI projects to create ''similar classes of EEI technologies'' for purposes of determining ''under-representation''?
- Should we determine under-represented based on the pool of applications each year or based on the historical data for the program?

List of Subjects in 7 CFR Part 4280

Loan programs—Business and industry, Economic development, Energy, Energy Efficiency Improvements, Feasibility studies, Grant programs, Guaranteed loan programs, Renewable Energy Systems, and Rural areas.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301, 7 U.S.C. 1989, and 7 U.S.C. 8107, chapter XLII of title 7 of the Code of Federal Regulations is proposed to be amended as follows: Chapter XLII—Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture

PART 4280—LOAN AND GRANTS

■ 1. The authority citation for part 4280 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 940c; 7 U.S.C. 8107

■ 2. Subpart B is revised as follows:

Subpart B—Rural Energy for America Program

General

Sec.

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4280.102 Organization of subpart.
4280.103 Definitions.
4280.104 Exception authority.
4280.105 Review or appeal rights.
4280.106 Conflict of interest.
4280.107 USDA Departmental regulations.
4280.108 Laws that contain other compliance requirements.
4280.109 Ineligible applicants, borrowers, and owners.
4280.110 General applicant, application, and funding provisions.
4280.111 Notifications.

Renewable Energy System and Energy Efficiency Improvement Grants

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4280.113 Project eligibility.
4280.114 [Reserved]

4280.115 RES and EEI grant funding.
4280.116 Grant applications—general.
4280.117 Grant applications for RES and EEI projects with total project costs greater than $200,000.
4280.118 Grant applications for RES and EEI projects with total project costs of $200,000 or less.
4280.119 Grant applications for RES and EEI projects with total project costs of $80,000 or less.
4280.120 Scoring RES and EEI grant applications.
4280.121 Selecting RES and EEI grant applications for award.
4280.122 Awarding and administering RES and EEI grants.
4280.123 Servicing RES and EEI grants.
4280.124 Construction planning and performing development.

Renewable Energy System and Energy Efficiency Improvement Guaranteed Loans

4280.125 Compliance with §§ 4279.29 through 4279.99.
4280.126 Guarantee/annual renewal fee.
4280.127 Borrower eligibility.
4280.128 Project eligibility.
4280.129 Guaranteed loan funding.
4280.130 Loan processing.
4280.131 Credit quality.
4280.132 Financial statements.
4280.133 [Reserved]
4280.134 Personal and corporate guarantees.
4280.135 Scoring RES and EEI guaranteed loan only applications.
4280.136 [Reserved]
4280.137 Application and documentation.
4280.138 Evaluation of RES and EEI guaranteed loan applications.
4280.139 Selection of RES and EEI guaranteed loan only applications.
4280.140 [Reserved]
4280.141 Changes in borrower.
4280.142 Conditions precedent to issuance of loan note guarantee.
4280.143 Requirements after project construction.
4280.144–4280.151 [Reserved]
4280.152 Servicing guaranteed loans.
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Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements

4280.165 Combined funding for renewable energy systems and energy efficiency improvements.
4280.166–4280.168 [Reserved]

Renewable Energy System Feasibility Study Grants

4280.169 General provisions.
4280.170 Applicant eligibility.
4280.171 Eligibility of RES projects for feasibility study grants.
4280.172 [Reserved]
4280.173 Grant funding for RES feasibility studies.
4280.174–4280.175 [Reserved]
4280.176 Feasibility study grant applications—content.
4280.177 Evaluation of feasibility study grant applications.
4280.178 Scoring feasibility study grant applications.
4280.179 Selecting feasibility study grant applications for award.
4280.180 [Reserved]
4280.181 Awarding and administering feasibility study grants.
4280.182 Servicing feasibility study grants.
4280.183—4280.185 [Reserved]

Energy Audit and Renewable Energy Development Assistance Grants

4280.186 Applicant eligibility.
4280.187 Project eligibility.
4280.188 Grant funding for energy audit and renewable energy development assistance.
4280.189 [Reserved]
4280.190 EA and REDA grant applications—content.
4280.191 Evaluation of EA and REDA grant applications.
4280.192 Scoring EA and REDA grant applications.
4280.193 Selecting EA and REDA grant applications for award.
4280.194 [Reserved]
4280.195 Awarding and administering EA and REDA grants.
4280.196 Servicing EA and REDA grants.
4280.197–4280.199 [Reserved]
4280.200 OMB control number.
Appendix A to Part 4280—Technical Report for Energy Efficiency Improvement Projects
Appendix B to Part 4280—Technical Reports for Renewable Energy System (RES) Projects with Total Project Costs of $200,000 or Less
Appendix C to Part 4280—Technical Reports for Renewable Energy System Projects with Total Project Costs of Greater than $200,000
Appendix D to Part 4280 –Feasibility Study Content

General

§ 4280.101 Purpose.

The subpart contains the procedures and requirements for providing the following financial assistance under the Rural Energy for America Program (REAP):

(a) Grants or guaranteed loans, or a combination grant and guaranteed loan, for the purpose of purchasing and installing Renewable Energy Systems (RES) and Energy Efficiency Improvements (EEI);

(b) Grants for conducting RES Feasibility Studies; and

(c) Grants to assist Agricultural Producers and Rural Small Businesses by conducting Energy Audits (EA) and providing recommendations and information on Renewable Energy Development Assistance (REDA) and improving energy efficiency.

§ 4280.102 Organization of subpart.

(a) Sections 4280.103 through 4280.111 discuss definitions; exception authority; review or appeal rights; conflict of interest; USDA Departmental Regulations; other applicable laws; ineligible applicants, borrowers, and owners; general applicant, application, and funding provisions; and notifications, which are applicable to all of the funding programs under this subpart.

(b) Sections 4280.112 through 4280.124 discuss the requirements specific to RES and EEI grants. Sections 4280.112 and 4280.113 discuss, respectively, applicant and project eligibility. Section 4280.115 addresses funding provisions for these grants. Sections 4280.116 through 4280.119 address grant application content and required documentation. Sections 4280.120 through 4280.123 address the scoring, selection, awarding and administering, and servicing of these grant applications. Section 4280.124 addresses construction planning and development.

(c) Sections 4280.125 through 4280.152 discuss the requirements specific to RES and EEI guaranteed loans. Sections 4280.125 through 4280.128 discuss eligibility and requirements for making and processing loans guaranteed by the Agency. Section 4280.129 addresses funding for guaranteed loans. In general, Sections 4280.130 through 4280.152 provide guaranteed loan origination and servicing requirements. These requirements apply to lenders, holders, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Section 4280.137 addresses the application requirements for guaranteed loans.

(d) Section 4280.165 presents the process by which the Agency will make combined loan guarantee and grant funding available for RES and EEI projects.

(e) Sections 4280.170 through 4280.182 presents the process by which the Agency will make RES Feasibility Study grant funding available. These sections cover applicant and project eligibility, grant funding, application content, evaluation, scoring, selection, awarding and administering, and servicing.

(f) Sections 4280.186 through 4280.196 present the process by which the Agency will make EA and REDA grant funding available. These sections cover applicant and project eligibility, grant funding, application content, evaluation, scoring, selection, awarding and administering, and servicing.

(g) Appendices A through C cover technical report requirements. Appendix A applies to EEI projects; Appendix B applies to RES projects with Total Project Costs of $200,000 or less; and Appendix C applies RES projects with Total Project Costs greater

than $200,000. Appendix D identifies the contents of the Feasibility Study that will be required to be submitted to the Agency if funding is provided under §§ 4280.169 through 4280.182. Appendices A and B do not apply to RES and EEI projects with Total Project Costs of $80,000 or less, respectively. Instead, technical report requirements for these projects are found in § 4280.119.

§ 4280.103 Definitions.

Terms used in this subpart are defined in either § 4279.2 of this chapter or in this section. If a term is defined in both § 4279.2 and this section, it will have, for purposes of this subpart only, the meaning given in this section. Terms used in this subpart that have the same meaning as the terms defined in this section have been capitalized in this subpart.

Administrator. The Administrator of Rural Business-Cooperative Service within the Rural Development Mission Area of the U.S. Department of Agriculture.

Agency. The Rural Business-Cooperative Service (RBS) or successor agency assigned by the Secretary of Agriculture to administer the Rural Energy for America Program. References to the National Office, Finance Office, State Office, or other Agency offices or officials should be read as prefaced by ''Agency'' or ''Rural Development'' as applicable.

Agricultural producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

Anaerobic digester project. A Renewable Energy System that uses animal or other Renewable Biomass and may include other organic substrates, via anaerobic digestion, to produce biomethane that is used to produce thermal or electrical energy or that is converted to a compressed gaseous or liquid state.

Annual receipts. The total income or gross income (sole proprietorship) plus cost of goods sold.

Applicant. (1) Except for EA and REDA grants, the Agricultural Producer or Rural Small Business that is seeking a grant, guaranteed loan, or a combination of a grant and loan, under this subpart.

(2) For EA and REDA grants, a unit of state, tribal, or local government; a land-grant college or university or other Institution of Higher Education; a rural electric cooperative; a Public Power Entity; or an Instrumentality of a State, Tribal, or local government that is seeking an EA or REDA grant under this subpart.

Assignment Guarantee Agreement (Form RD 4279–6, or successor form). The signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Bioenergy project. A Renewable Energy System that produces fuel, thermal energy, or electric power from a Renewable Biomass source only.

Blended liquid transportation fuel. A fuel used for transportation that:

(1) Is composed of one or more fuel types, at least one of which must meet the Renewable Fuel Standard, and

(2) Results in a blended fuel that exceeds the highest Federal or State percentage volume, if any, for a renewable fuel required for each retail service station for the respective jurisdiction. For example, if the Federal government required E15 be dispensed at all retail service stations and a State required E30 be dispensed at all retail service stations in this State, then Applicants in that State would be eligible for funds under this program only if the Flexible Fuel Pump to be installed would dispense a Blended Liquid Transportation Fuel higher than E30 (e.g., E50, E85).

Capacity. The maximum output rate that an apparatus or heating unit is able to attain on a sustained basis as rated by the manufacturer.

Commercially available. A system that has a proven operating history for at least one year specific to the proposed application. Such a system is based on established design and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and balance of system equipment and spare parts are readily available. Service is readily available to properly maintain and operate the system. An established warranty exists for major parts and labor. If the system is currently Commercially Available only outside of the U.S., authoritative evidence of the foreign operating history, performance and reliability is required in order to address the proven operating history.

Complete application. An application that contains all parts necessary for the Agency to determine Applicant and project eligibility, to score the application, and, where applicable, to enable the Agency to perform a technical evaluation of the project.

Conditional Commitment (Form RD 4279–3, or successor form). The Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency and outlined in the Conditional Commitment.

Departmental regulations. The regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 2 CFR part 417 and 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

Design/build method. A method of project development whereby all design, engineering, procurement, construction, and other related project activities are performed under a single contract. The contractor is solely responsible and accountable for successful delivery of the project to the grantee and/or borrower as applicable.

Eligible project costs. The Total Project Costs that are eligible to be paid or guaranteed with program funds.

Energy analysis. An Agency-approved report prepared by an individual or entity who has at least 3 years experience and completed at least five energy analyses, energy assessments, or energy audits on similar type projects, assessing energy use, cost and efficiency by analyzing energy bills and surveying the target building and/or equipment sufficiently to provide an Agency-approved energy analysis.

Energy assessment. An Agency-approved report prepared by an Energy Auditor, Energy Assessor, or an individual supervised by either an Energy Assessor or Energy Auditor, assessing energy use, cost, and efficiency by analyzing energy bills and surveying the target building and/or equipment sufficiently to provide an Agency-approved energy assessment. The final energy assessment must be validated and signed by the Energy Assessor or Energy Auditor who conducted the assessment or by the supervising Energy Assessor or Energy Auditor of the individual who conducted the assessment, as applicable.

Energy assessor. A Qualified Consultant who has at least 3 year experience and completed at least five Energy Assessments or Energy Audits on similar type projects and who adheres to generally recognized engineering principles and practices.

Energy audit (EA). A comprehensive report that meets an Agency approved standard prepared by an Energy Auditor

or an individual supervised by an Energy Auditor that documents current energy usage; recommended potential improvements, typically called energy conservation measures, and their costs; energy savings from these improvements; dollars saved per year; and Simple Payback. The methodology of the energy audit must meet professional and industry standards. The final energy audit must be validated and signed off by the Energy Auditor who conducted the audit or by the supervising Energy Auditor of the individual who conducted the audit, as applicable.

Energy auditor. A Qualified Consultant that meets one of the following criteria:

(1) A Certified Energy Auditor certified by the Association of Energy Engineers;

(2) A Certified Energy Manager certified by the Association of Energy Engineers;

(3) A Licensed Professional Engineer in the State in which the audit is conducted with at least 1 year experience and who has completed at least two similar type Energy Audits; or

(4) An individual with a four-year engineering or architectural degree with at least 3 years experience and who has completed at least five similar type Energy Audits.

Energy efficiency improvement (EEI). Improvements to or replacement of an existing building and/or equipment that reduces energy consumption on an annual basis.

Feasibility study. An analysis conducted by a qualified consultant of the economic, market, technical, financial, and management feasibility of a proposed project or business.

Federal fiscal year. The 12-month period beginning October 1 of any given year and ending on September 30 of the following year.

Financial feasibility. The ability of a project or business to achieve sufficient income, credit, and cash flow to financially sustain a project over the long term. The concept of financial feasibility includes assessments of the cost-accounting system, the availability of short-term credit for seasonal businesses, and the adequacy of raw materials and supplies.

Flexible fuel pump. A retail pump that combines and dispenses a Blended Liquid Transportation Fuel or dispenses a Blended Liquid Transportation Fuel. If a flexible fuel pump dispenses more than one blend of liquid transportation fuel, at least one of the blends must meet the definition of Blended Liquid Transportation Fuel found in this section.

Geothermal direct generation. A system that uses thermal energy directly from a geothermal source.

Geothermal electric generation. A system that uses thermal energy from a geothermal source to produce electricity.

Grant agreement (Form RD 4280–2, Rural Business Cooperative Service Grant Agreement, or successor form). An agreement between the Agency and the grantee setting forth the provisions under which the grant will be administered.

Hybrid. A combination of two or more Renewable Energy technologies that are incorporated into a unified system to support a single project.

Hydroelectric source. A Renewable Energy System producing electricity using various types of moving water including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water. For the purposes of this subpart, only those hydroelectric sources with a Rated Power of 30 megawatts or less are eligible.

Hydrogen project. A system that produces hydrogen from a Renewable Energy source or that uses hydrogen produced from a Renewable Energy source as an energy transport medium in the production of mechanical or electric power or thermal energy.

Immediate family. Individuals who are closely related by blood, marriage, or adoption, or who live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Inspector. A Qualified Consultant with at least 3 year experience and who has completed at least five inspections on similar type projects. A project might require one or more inspectors to perform the required inspections.

Institution of higher education. As defined in 20 U.S.C. 1002(a).

Instrumentality. An organization recognized, established, and controlled by a State, Tribal, or local government, for a public purpose or to carry out special purposes (e.g., a Water District, Resource Conservation and Development Council, etc.).

Interconnection agreement. A contract containing the terms and conditions governing the interconnection and parallel operation of the grantee's or borrower's electric generation equipment and the utility's electric power system.

Lender's Agreement (Form RD 4279–4, or successor form). Agreement between the Agency and the lender setting forth the lender's loan responsibilities.

Loan Note Guarantee (Form RD 4279–5, or successor form). A guarantee issued and executed by the Agency containing the terms and conditions of the guarantee.

Matching funds. The funds needed to pay for the portion of the Total Project Costs not funded or guaranteed by the Agency. Unless authorized by statute, other Federal grant funds cannot be used to meet a Matching Funds requirement.

Ocean energy. Energy created by use of various types of moving water in the ocean and other large bodies of water (e.g., Great Lakes) including, but not limited to, tidal, wave, current, and thermal changes.

Passive investor. An equity investor that does not actively participate in management and operation decisions of the business entity as evidenced by a contractual agreement.

Power purchase agreement. The terms and conditions governing the sale and transportation of electricity produced by the grantee or borrower to another party.

Public power entity. Is defined using the definition of ''state utility'' as defined in section 217(A)(4) of the Federal Power Act (16 U.S.C. 824q(a)(4)). As of this writing, the definition ''means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or a corporation that is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing, or distributing power.''

Qualified consultant. An independent third-party individual or entity possessing the knowledge, expertise, and experience to perform the specific task required.

Rated power. The maximum amount of energy that can be created at any given time.

Refurbished. Refers to a Renewable Energy System or equipment that has been brought into a facility, thoroughly inspected, and worn parts replaced. A refurbished system or equipment will typically have some type of warranty.

Renewable biomass. (1) Materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of subsection (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste, yard waste, and other biodegradable waste. (Waste material does not include unsegregated solid waste.)

Renewable energy. Energy derived from:

(1) A wind, solar, Renewable Biomass, ocean (including tidal, wave, current, and thermal), geothermal or Hydroelectric Source; or

(2) Hydrogen derived from Renewable Biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal or Hydroelectric Sources.

Renewable energy development assistance (REDA). Assistance provided by eligible grantees to Agricultural Producers and Rural Small Businesses to become more energy efficient and to use Renewable Energy technologies and resources. The renewable energy development assistance may consist of Renewable Energy site assessment and/or Renewable Energy Technical Assistance.

Renewable energy site assessment. A report provided to an Agricultural Producer or Rural Small Business providing information regarding and recommendations for the use of Commercially Available Renewable Energy technologies in its operation. The report must be prepared by a Qualified Consultant and must contain the information specified in Sections A through C of Appendix B.

Renewable energy system (RES). A system that produces or produces and delivers a usable energy from a Renewable Energy source, or is a Flexible Fuel Pump.

Renewable energy technical assistance. Assistance provided to Agricultural Producers and Rural Small Businesses on how to use Renewable Energy technologies and resources in their operations.

Retrofitting. The modification of a Renewable Energy System to incorporate features not included in the original design or for the replacement of existing components with ones that improve the original design.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than two census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are ''not urban in character.''

(4) For the State of Hawaii, all areas within the State are considered rural and eligible except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is ''rural in character'' will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is ''rural in character'' under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

Rural Small Business. A Small Business that is located in a Rural Area or that can demonstrate the proposed project for which assistance is being applied for under this subpart is located in a Rural Area.

Simple payback. The estimated simple payback of a project funded under this subpart as calculated using paragraph (1), (2), or (3), as applicable, of this definition.

(1) For energy generation projects, Simple Payback is calculated as follows:

(i) Simple Payback = (Total Project Costs)/(Average Net Income + Interest Expense + Depreciation Expense (for the project))

(ii) Average Net Income:

(A) Is based on all energy related revenue streams which include monetary benefits from production tax credit, renewable energy credit, carbon credits, revenue from byproducts produced by the energy system, fair market value of byproducts produced by and used in the project or related enterprises, and other incentives that can be annualized.

(B) Is based on income remaining after all project obligations are paid (operating and maintenance), except interest and depreciation as noted above.

(C) Is based on the Agency's review and acceptance of the project's typical year income (which is after the project is operating and stabilized) projections at the time of application submittal.

(D) Does not allow Investment Tax Credits, State tax incentives, or other one-time construction and investment related benefits that cannot be annualized to be included as income or reduce total Eligible Project Costs.

(2) For EEI projects, Simple Payback is calculated as follows:

(i) Simple Payback = (Total Project Costs)/Dollar Value of Energy Generated or Saved (as applicable)

(ii) Dollar Value of Energy Generated or Saved incorporates the following:

(A) All energy related revenue streams, which include monetary benefits from production tax credit, renewable energy credit, carbon credits, revenue from byproducts produced by the energy system, and other monetary incentives that can be annualized.

(B) Energy saved or replaced will be calculated on the quantity of energy saved or replaced (as determined by subtracting the result obtained under paragraph (2)(ii)(B)(*2*) from the result obtained under paragraph (2)(ii)(B)(*1*) of this definition, and converted to a monetary value using a constant value or price of energy (as determined under paragraph (2)(ii)(B)(*3*) of this definition).

(*1*) Actual energy used in the original building and/or equipment, as applicable, prior to the RES or EEI project, shall be based on the actual average annual total energy used (BTU) over the most recent 36 months of operation or, if in operation for less than 36 months, the length of ownership.

(*2*) Projected energy use if the proposed RES or EEI project had been in place for the original building and/or equipment, as applicable, for the same time period used to determine that actual energy use under paragraph (2)(ii)(B)(*1*) of this definition.

(*3*) Value or price of energy shall be the actual average price paid over the same time period used to calculate the actual energy used under paragraph (2)(ii)(B)(*1*) of this definition.

(C) Does not allow Energy Efficiency Improvements to monetize benefits other than the dollar amount of the energy savings the Agricultural Producer or Rural Small Business realizes as a result of the improvement.

(D) Does not allow investment tax credits, State tax incentives, or other one-time construction and investment related benefits that cannot be annualized to be included as income or reduce total Eligible Project Costs.

(3) For Flexible Fuel Pumps, only the costs for the Flexible Fuel Pump and any equipment and tanks directly associated with the Flexible Fuel Pump, revenue, and expenses will be included in the calculation for Simple Payback as follows:

(i) Simple Payback = (Total Project Costs)/(Average Net Income + Interest Expense + Depreciation Expense (for the project))

(ii) Average Net Income is based on:

(A) All energy-related revenue streams, which include monetary benefits from tax credits and other credits or incentives that can be annualized.

(B) Income remaining after all project obligations are paid (operating and maintenance), except interest and depreciation as noted above.

(C) The Agency's review and acceptance of the project's typical year income (which is after the project is operating and stabilized) projections at the time of application submittal.

(D) Does not allow State tax incentives or other one-time construction and investment related benefits that cannot be annualized to be included as income or reduce total Eligible Project Costs.

Small business. An entity is considered a small business in accordance with the Small Business Administration's (SBA) small business size standards categorized by the North American Industry Classification System (NAICS) found in 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility (including a Tribal or governmental electric utility) that provides service to rural consumers provided such utilities meet SBA's definition of small business. These entities must operate independent of direct Government control except for Tribal corporations charted under Section 17 of the Indian Reorganization Act (25 U.S.C. 477) or other Tribal business entities that have similar structures and relationships with their Tribal governments as determined by the Agency. The Agency shall determine the small business status of such a Tribal entity without regard to the resources of the Tribal government. With the exception of the entities described above, all other non-profit entities are excluded.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Total project costs. The sum of all costs associated with a completed project.

Used equipment. Any equipment that has been used in any previous application and is provided in an ''as is'' condition.

§ 4280.104 Exception authority.

The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's financial interest.

§ 4280.105 Review or appeal rights.

An Applicant, lender, holder, borrower, or grantee may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11.

(a) *Guaranteed loan.* In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency.

(b) *Combined guaranteed loan and grant.* For an adverse decision involving a combination guaranteed loan and grant funding request, only the party that is adversely affected may request the review or appeal.

§ 4280.106 Conflict of interest.

(a) *General.* No conflict of interest or appearance of conflict of interest will be

allowed. For purposes of this subpart, conflict of interest includes, but is not limited to, distribution or payment of grant, guaranteed loan funds, and Matching Funds or award of project contracts to an individual owner, partner, or stockholder, or to a beneficiary or Immediate Family of the Applicant or borrower when the recipient will retain any portion of ownership in the Applicant's or borrower's project. Grant and Matching Funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest.

(b) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(c) *Member/delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise there from; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress.

§ 4280.107 USDA Departmental regulations.

All projects funded under this subpart are subject to the provisions of the Departmental Regulations, as applicable, which are incorporated by reference herein.

§ 4280.108 Laws that contain other compliance requirements.

(a) *Equal opportunity and nondiscrimination.* The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and 7 CFR part 15d, Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture. The Agency will not discriminate against Applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the Applicant has the capacity to contract); because all or part of the Applicant's income derives from any public assistance program; or because the Applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq).*

(b) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.),* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). This may include collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

(1) Initial compliance reviews will be conducted by the Agency prior to funds being obligated.

(2) Grants will require one subsequent compliance review following project completion. This will occur after the last disbursement of grant funds has been made.

(c) *Environmental analysis.* 7 CFR part 1940, subpart G or successor regulation outlines environmental procedures and requirements for this subpart. Prospective Applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

(1) Any required environmental review must be completed by the Agency prior to the Agency obligating any funds.

(2) The Applicant will be notified of all specific compliance requirements, including, but not limited to, the publication of public notices, and consultation with State Historic Preservation Offices and the U.S. Fish and Wildlife Service.

(3) A site visit by the Agency may be scheduled, if necessary, to determine the scope of the review.

(d) *Discrimination complaints.*

(1) *Who may file.* Persons or a specific class of persons believing they have been subjected to discrimination prohibited by this section may file a complaint personally, or by an authorized representative with USDA, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250.

(2) *Time for filing.* A complaint must be filed no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated officials of USDA or Rural Development.

§ 4280.109 Ineligible Applicants, borrowers, and owners.

Applicants, borrowers, and owners will be ineligible to receive funds under this subpart as discussed in paragraphs (a) and (b) of this section.

(a) If an Applicant, borrower, or owner has an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent on a Federal debt, the Applicant, borrower, or owner is not eligible to receive a grant or guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.

(b) If an Applicant, borrower, or owner is debarred from receiving Federal assistance, the Applicant, borrower, or owner is not eligible to receive a grant or guaranteed loan under this subpart.

§ 4280.110 General Applicant, application, and funding provisions.

(a) *Satisfactory progress.* An Applicant that has received one or more grants and/or guaranteed loans under this program must make satisfactory progress, as determined by the Agency, toward completion of any previously funded projects before the Applicant will be considered for subsequent funding.

(b) *Application submittal.* Applications must be submitted in accordance with the provisions of this subpart unless otherwise specified in a **Federal Register** notice. Grant applications, guaranteed loan only applications, and combined guaranteed loan and grant applications for financial assistance under this subpart may be submitted at any time except for EA and REDA applications. The application competition deadline for EA and REDA applications is identified in § 4280.193.

(1) *Grant applications.* Complete grant applications will be accepted on a continuous basis, with awards made based on the application's score and subject to available funding. EA and REDA applications will be accepted as identified in § 4280.193.

(2) *Guaranteed loan only applications.* Each complete guaranteed loan-only applications received by the Agency will be scored. Each application that is ready for funding and that scores at or above the minimum score will be competed on the first business day of the second month of each Federal fiscal quarter, with higher scoring applications receiving priority. Each application ready for funding that scores below the minimum score will be competed during the last fiscal quarter.

(3) *Combined guaranteed loan and grant applications.* Applications requesting a RES or EEI grant and a guaranteed loan under this subpart will be accepted on a continuous basis, with awards made based on the grant application's score and subject to available funding.

(c) *Limit on number of applications.* An Applicant can apply for only one Renewable Energy System project, one Energy Efficiency Improvement project,

and one Feasibility Study project under this subpart per Federal Fiscal Year.

(d) *Limit on type of funding requests.* An Applicant can submit only one type of funding request (grant-only, guaranteed loan-only or combined funding) for each project under this subpart per Federal Fiscal Year.

(e) *Application modification.* Once submitted and prior to Agency award, if an Applicant modifies its application, the application will be treated as a new application. The submission date of record for such modified applications will be the date the Agency receives the modified application, and the application will be processed by the Agency as a new application under this subpart.

(f) *Incomplete applications.* Applicants must submit Complete Applications in order to be considered for funding. If an application is incomplete, the Agency will identify those parts of the application that are incomplete and return it, with a written explanation, to the Applicant for possible future resubmission. Upon receipt of a Complete Application by the appropriate Agency office, the Agency will complete its evaluation and will compete the application in accordance with the procedures specified in §§ 4280.121, 4280.179 or 4280.193 as applicable of this subpart.

(g) *Application withdrawal.* During the period between the submission of an application and the execution of loan and/or grant award documents for an application selected for funding, the Applicant must notify the Agency, in writing, if the project is no longer viable or the Applicant no longer is requesting financial assistance for the project. When the Applicant notifies the Agency, the selection will be rescinded and/or the application withdrawn.

(h) *Technical report.* Each technical report submitted under this subpart, as specified in §§ 4280.117(e), 4280.118(b)(4), and 4280.119(b)(3) and 4280.119(b)(4) must comply with the provisions specified in paragraphs (h)(1) through (h)(3), as applicable, of this section.

(1) *Technical report format and detail.* The information in the technical report must follow the format specified in § 4280.119(b)(3), § 4280.119(b)(4), and Appendices A through C of this subpart, as applicable. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. In addition, the information must be of sufficient detail to:

(i) Allow the Agency to determine the technical merit of the Applicant's project under paragraph (i) of this section; and

(ii) Demonstrate that the Renewable Energy System or Energy Efficiency Improvement will operate or perform over the project's useful life in a reliable, safe, and a cost-effective manner. Such demonstration shall address project design, installation, operation, and maintenance.

(2) *Technical report modifications.* If a technical report is prepared prior to the Applicant's selection of a final design, equipment vendor, or contractor, or other significant decision, it may be modified and resubmitted to the Agency, provided that the overall scope of the project is not materially changed as determined by the Agency. Changes in the technical report might require an updated Form RD 1940–20, ''Request for Environmental Information.''

(3) *Hybrid projects.* If the application is for a Hybrid project, technical reports must be prepared for each technology that comprises the Hybrid project.

(i) *Technical merit.* The Agency will determine the technical merit of all applications submitted under this subpart. The Agency's determination of a project's technical merit will be based on the information provided in the application. The Agency may engage the services of other government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application.

(1) Projects that are determined to have technical merit are eligible for funding under this subpart. Projects that are determined to be without technical merit will be deemed ineligible for funding under this subpart.

(2) If the information in the application is insufficient to allow the Agency to make a technical merit determination, the application will be considered by the Agency to be incomplete and such applications will be processed according to the procedures specified in paragraph (f) of this section.

(j) *Time limit on use of grant funds.* (1) Grant funds not expended within 2 years from the date the Grant Agreement was signed by the Agency will be returned to the Agency. However, the Agency may extend this period if the Agency determines, at its sole discretion, that the grantee is unable to complete the project for reasons beyond the grantee's control. Grantees must submit a request for the no-cost extension no later than 30 days before the expiration date of the Grant Agreement. This request must describe the extenuating circumstances that were beyond their control to complete the project for which the grant was awarded, and why an approval is in the Government's best interest.

(2) Funds remaining after grant closeout that exceed the amount the grantee is entitled to receive under the Grant Agreement will be returned to the Agency.

§ 4280.111 Notifications.

(a) *Eligibility.* If an Applicant and/or their application is determined by the Agency to be eligible for participation, the Agency will notify the Applicant or lender, as applicable, in writing.

(b) *Ineligibility.* If an Applicant and/or their application is determined to be ineligible at any time, the Agency will inform the Applicant or lender, as applicable, in writing of the decision, reasons therefore, and any appeal rights. No further evaluation of the application will occur.

(c) *Disposition of applications.* Each Applicant and/or lender, as applicable, will be notified of the Agency's decision on their application. If the Agency's decision is not to fund an application, the Agency will include in the notification any applicable appeal or review rights.

Renewable Energy System and Energy Efficiency Improvement Grants

§ 4280.112 Applicant eligibility.

To receive a RES or EEI grant under this subpart, an Applicant must meet the requirements specified in paragraphs (a) through (e) of this section. If an award is made to an Applicant, that Applicant (grantee) must continue to meet the requirements specified in this section. If the grantee does not, then grant funds may be recovered from the grantee by the Agency in accordance with Departmental Regulations.

(a) *Type of Applicant.* The Applicant must be an Agricultural Producer or Rural Small Business.

(b) *Ownership and control.* The Applicant must:

(1) Own or be the prospective owner of the project; and

(2) Own or control the site for the project described in the application at the time of application and, if an award is made, for the useful life of the project as described in the Grant Agreement.

(c) *Revenues and expenses.* The Applicant must have available at the time of application satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the useful life of the project. In addition, the Applicant must control the revenues and expenses of

the project, including its operation and maintenance, for which the assistance is sought. Notwithstanding the provisions of this paragraph, the Applicant may employ a Qualified Consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(d) *Legal authority and responsibility.* Each Applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(e) *Universal identifier and System for Awards Management (SAM).* Unless exempt under 2 CFR 25.110, the Applicant must:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by the Agency; and

(3) Provide its DUNS number in each application or plan it submits to the Agency. Generally, the DUNS number is included on Standard Form-424, ''Application for Federal Assistance.''

§ 4280.113 Project eligibility.

For a project to be eligible to receive a RES or EEI grant under this subpart, the proposed project must meet each of the requirements specified in paragraphs (a) through (e) of this section.

(a) Be for:

(1) The purchase of a new Renewable Energy System;

(2) The purchase of a Refurbished Renewable Energy System;

(3) The Retrofitting of an existing Renewable Energy System; or

(4) Making Energy Efficiency Improvements that will use less energy on an annual basis than the original building and/or equipment that it will improve or replace as demonstrated in an Energy Analysis, Energy Assessment, or Energy Audit as applicable.

(i) Eligible Energy Efficiency Improvements include, but are not limited to:

(A) Efficiency improvements to existing Renewable Energy Systems and

(B) Construction of a new energy efficient building only when the building is used for the same purpose as the existing building, and, based on an Energy Analysis, Energy Audit, or Energy Assessment, as applicable, it will be more cost effective to construct a new building and will use less energy on annual basis than improving the existing building.

(ii) If the proposed Energy Efficiency Improvement would duplicate the same Energy Efficiency Improvement that had previously received funds under this subpart, then the proposed improvement is ineligible. For example, an Applicant received a grant to replace the windows in a warehouse with more energy efficient windows. Shortly thereafter, the Applicant decides to replace the new windows. An application for replacing the new windows would be ineligible for funding under this subpart.

(b) Be for a Commercially Available and replicable technology;

(c) Have technical merit, as determined using the procedures specified in § 4280.110(i); and

(d) Be located in a Rural Area in a State if the type of Applicant is a Rural Small Business, or in a Rural or non-Rural area in a State if the type of Applicant is an Agricultural Producer. If the Agricultural Producer's operation is in a non-Rural area, then the application can only be for Renewable Energy Systems or Energy Efficiency Improvements on integral components of or that are directly related to the agricultural production operation, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(e) The Applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the Applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

§ 4280.114 [Reserved]

§ 4280.115 RES and EEI grant funding.

(a) *Grant amounts.* The amount of grant funds that will be made available to an eligible RES or EEI project under this subpart will not exceed 25 percent of total Eligible Project Costs. Eligible Project Costs are specified in paragraph (c) of this section.

(1) *Minimum request.* Unless otherwise specified in a **Federal Register** notice, the minimum request for a RES grant application is $2,500 and the minimum request for an EEI grant application is $1,500.

(2) *Maximum request.* Unless otherwise specified in a **Federal Register** notice, the maximum request for a RES grant application is $500,000 and the maximum request for an EEI grant application is $250,000.

(3) *Maximum grant assistance.* Unless otherwise specified in a **Federal Register** notice, the maximum amount of grant assistance to one individual or entity under this subpart will not exceed $750,000 per Federal Fiscal Year.

(b) *Matching Funds.* The Applicant is responsible for securing the remainder of the Total Project Costs not covered by grant funds.

(1) Without specific statutory authority, other Federal grant funds cannot be used to meet the Matching Funds requirement. A copy of the statutory authority must be provided to the Agency to verify if the other Federal grant funds can be used to meet the Matching Funds requirement under this subpart.

(2) Passive third-party equity contributions are acceptable for RES projects, including equity raised from the sale of Federal tax credits.

(c) *Eligible Project Costs.* Eligible Project Costs are only those costs incurred after a Complete Application has been received by the Agency and are associated with the items identified in paragraphs (c)(1) through (c)(5) of this section. Each item identified in paragraphs (c)(1) through (c)(5) is only an Eligible Project Cost if it is either an integral component of or directly related to and its use and purpose is limited to the Renewable Energy System or Energy Efficiency Improvement.

(1) Purchase and installation of new or Refurbished equipment.

(2) Construction, Retrofitting, and improvements.

(3) Energy Efficiency Improvements identified in the applicable Energy Analysis, Energy Assessment, or Energy Audit.

(4) Fees for construction permits and licenses.

(5) Professional service fees for Qualified Consultants, contractors, installers, and other third-party services.

(d) *Ineligible project costs.* Ineligible project costs for RES and EEI projects include, but are not limited to:

(1) Agricultural tillage equipment, Used Equipment, and vehicles;

(2) Residential RES or EEI projects;

(3) Construction or equipment costs that would be incurred regardless of the installation of a Renewable Energy System or Energy Efficiency Improvement shall not be included as an Eligible Project Costs. For example, the foundation for a building where a Renewable Energy System is being installed, storage only grains bins connected to drying systems, and the roofing of a building where solar panels are being attached;

(4) Businesses that derive more than 10 percent of annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State or Tribal-authorized

lottery proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project;

(5) Businesses deriving income from activities of a sexual nature or illegal activities;

(6) The guarantee of lease payments;

(7) Guaranteeing loans made by other Federal agencies;

(8) Any project that creates a conflict of interest or an appearance of a conflict of interest as provided in § 4280.106;

(9) Funding of political or lobbying activities; and

(10) To pay off any Federal direct or guaranteed loans.

(e) *Award amount considerations.* In determining the amount of a RES or EEI grant awarded, the Agency will take into consideration the following six criteria:

(1) The type of Renewable Energy System to be purchased;

(2) The estimated quantity of energy to be generated by the Renewable Energy System;

(3) The expected environmental benefits of the Renewable Energy System;

(4) The quantity of energy savings expected to be derived from the activity, as demonstrated by an Energy Audit;

(5) The estimated period of time for the energy savings generated by the activity to equal the cost of the activity; and

(6) The expected energy efficiency of the Renewable Energy System.

§ 4280.116 Grant applications—general.

(a) *General.* Separate applications must be submitted for RES and EEI projects. An original of each application is required.

(b) *Application content.* Applications for RES projects or EEI projects must contain the information specified in § 4280.117 unless the requirements of either § 4280.118(a) or § 4280.119(a) are met. If the requirements of § 4280.118(a) are met, the application may contain the information specified in § 4280.118(b). If the requirements of § 4280.119(a) are met, the application may contain the information specified in § 4280.119(b).

(c) *Evaluation of applications.* The Agency will evaluate each RES and EEI grant application and make a determination as to whether:

(1) The grant application documentation is complete;

(2) The Applicant is eligible;

(3) The proposed grant is for an eligible project; and

(4) The proposed project has technical merit.

§ 4280.117 Grant applications for RES and EEI projects with Total Project Costs greater than $200,000.

Grant applications for RES and EEI projects with Total Project Costs greater than $200,000 must provide the information specified in this section. This information must be presented in the order shown in paragraphs (a) through (f), as applicable, of this section. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

(a) *Forms and certifications.* Each application must contain the forms and certifications specified in paragraphs (a)(1) through (a)(9), as applicable, of this section, except that Form AD 2106, ''Form to Assist in Assessment of USDA Compliance with Civil Rights Laws,'' is optional.

(1) Form SF–424.

(2) Form SF–424C, ''Budget Information-Construction Programs.''

(3) Form SF–424D, ''Assurances-Construction Programs.''

(4) Form AD 2106. Although this form is optional, if the applicant has previously submitted the form to the Agency or another Federal agency, the applicant does not need to resubmit the form.

(5) Form RD 1940–20 with documentation attached for the appropriate level of environmental assessment. The Applicant should contact the Agency to determine what documentation is required to be provided.

(6) The Applicant must identify whether or not the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(7) Certification that the Applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the State(s) or Tribe where the Applicant has a place of business.

(8) Certification by the Applicant that the equipment required for the project is available, can be procured and delivered within the proposed project development schedule, and must be installed in conformance with manufacturer's specifications and design requirements. This would not be applicable when equipment is not part of the project.

(9) Certification by the Applicant that the project will be constructed in accordance with applicable laws, regulations, agreements, permits, codes, and standards.

(b) *Applicant information.* Provide information to allow the Agency to determine the eligibility of the Applicant.

(1) *Type of Applicant.* Demonstrate that the Applicant meets the definition of Agricultural Producer or Rural Small Business, including appropriate information necessary to demonstrate that the Applicant meets the Agricultural Producer's percent of gross income derived from agricultural operations or the Rural Small Business' size, as applicable, requirements identified in these definitions. Include a description of the Applicant's farm/ranch/business operation.

(i) *Rural Small Businesses.* Identify the primary NAICS code applicable to the Applicant's operation. Provide sufficient information to determine total Annual Receipts for the past 3 years and number of employees of the business and any parent, subsidiary, or affiliates at other locations to demonstrate that the Applicant meets the definition of Small Business. If the Rural Small Business Applicant has not engaged in business operations for the past 3 years, than information for as long as the Rural Small Business Applicant has been in business must be submitted. New businesses that do not have any Annual Receipts must provide projections based upon a typical operating year for a 2-year time period.

(ii) *Agricultural producers.* Provide the gross market value of the Applicant's agricultural products, gross agricultural income of the Applicant, and gross nonfarm income of the Applicant for the calendar year preceding the year in which the application is being submitted.

(2) *Applicant description.* Describe the ownership of the Applicant, including the following information if applicable.

(i) *Ownership and control.* Describe how the Applicant meets the ownership and control requirements.

(ii) *Affiliated companies.* For entities (e.g., corporate parents, affiliates, subsidiaries), provide a list of the individual owners with their contact information of those entities. Describe the relationship between the Applicant and these other entities, including management and products exchanged.

(3) *Financial information.* Financial information is required on the total operation of the Agricultural Producer/Rural Small Business and its parent, subsidiary, or affiliates at other

locations. All information submitted under this paragraph must be substantiated by authoritative records.

(i) *Historical financial statements.* Provide historical financial statements prepared in accordance with Generally Accepted Accounting Practices (GAAP) for the past 3 years, including income statements and balance sheets. If Agricultural Producers are unable to present this information in accordance with GAAP, they may instead present financial information in the format that is generally required by commercial agriculture lenders.

(ii) *Current balance sheet and income statement.* Provide a current balance sheet and income statement prepared in accordance with GAAP and dated within 90 days of the application. Agricultural producers can present financial information in the format that is generally required by commercial agriculture lenders.

(iii) *Pro forma financial statements.* Provide pro forma balance sheet at start-up of the Agricultural Producer's/Rural Small Business' business that reflects the use of the loan proceeds or grant award; and 3 additional years, indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(4) *Previous grants and loans.* State whether the Applicant has received any grants and/or loans under this subpart. If the Applicant has, identify each such grant and/or loan and describe the progress the Applicant has made on each project for which the grant and/or loan was received, including projected schedules and actual completion dates.

(c) *Project information.* Provide information concerning the proposed project as a whole and its relationship to the Applicant's operations, including the following:

(1) Identification as to whether the project is for a RES or an EEI project. Include a description and the location of the project.

(2) A description of the process that will be used to conduct all procurement transactions to demonstrate compliance with § 4280.124(a)(1).

(3) Describe how the proposed project will have a positive effect on resource conservation (e.g., water, soil, forest), public health (e.g., potable water, air quality), and the environment (e.g., compliance with the U.S. Environmental Protection Agency's renewable fuel standard(s), greenhouse gases, emissions, particulate matter).

(4) Identify the amount of Matching Funds and the source(s) the Applicant is proposing to use for the project. Provide written commitments for Matching Funds at the time the application is submitted to receive points under the readiness scoring criterion.

(d) *Feasibility Study for Renewable Energy Systems.* If the application is for a RES project with Total Project Costs greater than $200,000, a Feasibility Study must be submitted as specified in Appendix D of this subpart. The Feasibility Study must be conducted by a Qualified Consultant.

(e) *Technical report.* Each application must contain a technical report prepared in accordance with § 4280.110(h) and Appendix A or C, as applicable, of this subpart.

(f) *Construction planning and performing development.* Each application submitted must be in accordance with § 4280.124 for planning, designing, bidding, contracting, and constructing RES and EEI projects as applicable.

§ 4280.118 Grant applications for RES and EEI projects with Total Project Costs of $200,000 or less.

Grant applications for RES and EEI projects with Total Project Costs of $200,000 or less may provide the information specified in this section or, if the Applicant elects to do so, the information specified in § 4280.117. In order to submit an application under this section, the criteria specified in paragraph (a) of this section must be met. The content for applications submitted under this section is specified in paragraph (b) of this section. Unless otherwise specified in this subpart, the construction planning and performing development procedures and the payment process that will be used for awards for applications submitted under this section are specified in paragraphs (c) and (d), respectively, of this section.

(a) *Criteria for submitting applications for projects with Total Project Costs of $200,000 or less.* In order to submit an application under this section, each of the conditions specified in paragraphs (a)(1) through (a)(7) of this section must be met.

(1) The Applicant must be eligible in accordance with § 4280.112.

(2) The project must be eligible in accordance with § 4280.113.

(3) Total Project Costs must be $200,000 or less.

(4) Construction planning and performing development must be performed in compliance with paragraph (c) of this section. The Applicant or the Applicant's prime contractor assumes all risks and responsibilities of project development.

(5) The Applicant or the Applicant's prime contractor is responsible for all interim financing, including during construction.

(6) The Applicant agrees not to request reimbursement from funds obligated under this program until after project completion.

(7) The Applicant must maintain insurance as required under § 4280.122(b), except business interruption insurance is not required.

(b) *Application content.* Applications submitted under this section must contain the information specified in paragraphs (b)(1) through (b)(4) of this section and must be presented in the same order. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

(1) *Forms and certifications.* The application must contain the items identified in § 4280.117(a). In addition, the Applicant must submit a certification that the Applicant meets each of the criteria for submitting an application under this section as specified in paragraph (a) of this section.

(2) *Applicant information.* The application must contain the items identified in § 4280.117(b), except that the information specified in § 4280.117(b)(3) is not required.

(3) *Project information.* The application must contain the items identified in § 4280.117(c).

(4) *Technical report.* Each application must contain a technical report in accordance with § 4280.110(h) and Appendix A or B, as applicable, of this subpart.

(c) *Construction planning and performing development.* Applicants submitting applications under this section must comply with the requirements specified in paragraphs (c)(1) through (c)(3) of this section for construction planning and performing development.

(1) *General.* Paragraphs (a)(1), (a)(2), and (a)(4) of § 4280.124 apply.

(2) *Small acquisition and construction procedures.* Small acquisition and construction procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, equipment and construction of a RES or EEI project with a Total Project Cost of not more than $200,000. The Applicant is solely responsible for the execution of all contracts under this

procedure, and Agency review and approval is not required.

(3) *Contractor forms.* Applicants must have each contractor sign, as applicable:

(i) Form RD 400–6, ''Compliance Statement,'' for contracts exceeding $10,000; and

(ii) Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions,'' for contracts exceeding $25,000.

(d) *Payment process for applications for RES and EEI projects with Total Project Costs of $200,000 or less.* (1) Upon completion of the project, the grantee must submit to the Agency a copy of the contractor's certification of final completion for the project and a statement that the grantee accepts the work completed. At its discretion, the Agency may require the Applicant to have an Inspector certify that the project is constructed and installed correctly.

(2) The RES or EEI project must be constructed, installed, and operating as described in the technical report prior to disbursement of funds. For Renewable Energy Systems, the system must be operating at the steady state operating level described in the technical report for a period of not less than 30 days, unless this requirement is modified by the Agency, prior to disbursement of funds. Any modification to the 30-day steady state operating level requirement will be based on the Agency's review of the technical report and will be incorporated into the Letter of Conditions.

(3) Prior to making payment, the Agency will be provided with Form RD 1924–9, ''Certificate of Contractor's Release,'' and Form RD 1924–10, ''Release by Claimants,'' or similar forms, executed by all persons who furnished materials or labor in connection with the contract.

§ 4280.119 Grant applications for RES and EEI projects with Total Project Costs of $80,000 or less.

Grant applications for RES and EEI projects with Total Project Costs of $80,000 or less must provide the information specified in this section or, if the Applicant elects to do so, the information specified in either §§ 4280.117 or 4280.118. In order to submit an application under this section, the criteria specified in paragraph (a) of this section must be met. The content for applications submitted under this section is specified in paragraph (b) of this section. Unless otherwise specified in this subpart, the construction planning and performing development procedures and the payment process that will be used for awards for applications submitted under this section are specified in paragraphs (c) and (d), respectively, of this section.

(a) *Criteria for submitting applications for RES and EEI projects with Total Project Costs of $80,000 or less.* In order to submit an application under this section, each of the conditions specified in paragraphs (a)(1) through (a)(7) of this section must be met.

(1) The Applicant must be eligible in accordance with § 4280.112.

(2) The project must be eligible in accordance with § 4280.113.

(3) Total Project Costs must be $80,000 or less.

(4) Construction planning and performing development must be performed in compliance with paragraph (c) of this section. The Applicant or the Applicant's prime contractor assumes all risks and responsibilities of project development.

(5) The Applicant or the Applicant's prime contractor is responsible for all interim financing, including during construction.

(6) The Applicant agrees not to request reimbursement from funds obligated under this program until after project completion.

(7) The Applicant must maintain insurance as required under § 4280.122(b), except business interruption insurance is not required.

(b) *Application content.* Applications submitted under this section must contain the information specified in paragraphs (b)(1) through (b)(4), as applicable, of this section and must be presented in the same order. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

(1) *Forms and certifications.* Each application must contain the forms and certifications specified in paragraphs (b)(1)(i) through (b)(1)(ix), as applicable, of this section except that Form AD 2106 is optional.

(i) Form SF–424.

(ii) Form SF–424C.

(iii) Form SF–424D.

(iv) Form AD 2106. Although this form is optional, if the applicant has previously submitted the form to the Agency or another Federal agency, the applicant does not need to resubmit the form.

(v) Form RD 1940–20 with documentation attached for the appropriate level of environmental assessment. The Applicant should contact the Agency to determine what documentation is required to be provided.

(vi) Certification by the Applicant that:

(A) The Applicant meets each of the Applicant eligibility criteria found in § 4280.112;

(B) The proposed project meets each of the project eligibility requirements found in § 4280.113;

(C) The design, engineering, testing, and monitoring will be sufficient to demonstrate that the proposed project will meet its intended purpose;

(D) The equipment required for the project is available, can be procured and delivered within the proposed project development schedule, and will be installed in conformance with manufacturer's specifications and design requirements. This would not be applicable when equipment is not part of the project;

(E) The project will be constructed in accordance with applicable laws, regulations, agreements, permits, codes, and standards;

(F) The Applicant meets the criteria for submitting an application for projects with Total Project Costs of $80,000 or less;

(G) The Applicant will abide by the open and free competition requirements in compliance with § 4280.124(a)(1);

(H) For Bioenergy Projects, any and all woody biomass feedstock from National forest system land or public lands cannot be otherwise used as a higher value wood-based product; and

(I) For applications for the installation of equipment and tanks directly associated with Flexible Fuel Pumps, Blended Liquid Transportation Fuel is available and there is demand for that fuel in its service area.

(vii) State whether the Applicant has received any grants and/or loans under this subpart. If the Applicant has, identify each such grant and/or loan and describe the progress the Applicant has made on each project for which the grant and/or loan was received, including projected schedules and actual completion dates.

(viii) The Applicant must identify whether or not the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(ix) The Applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the State(s) or Tribe where the Applicant has a place of business.

(2) *General.* For both RES and EEI project applications:

(i) Identify whether the project is for a RES or an EEI project;

(ii) Identify the primary NAICS code applicable to the Applicant's operation if known or a description of the operation in enough detail for the Agency to determine the primary NAICS code;

(iii) Describe in detail or document how the proposed project will have a positive effect on resource conservation (e.g., water, soil, forest), public health (e.g., potable water, air quality), and the environment (e.g., compliance with the U.S. Environmental Protection Agency's renewable fuel standard(s), greenhouse gases, emissions, particulate matter); and

(iv) Identify the amount of Matching Funds and the source(s) the Applicant is proposing to use for the project. In order to receive points under the readiness scoring criterion, written commitments for Matching Funds (e.g., a Letter of Commitment, bank statement) must be submitted when the application is submitted.

(3) *Technical report for energy efficiency improvements.* Each EEI application submitted under this section must include a technical report in accordance with § 4280.110(h) and paragraphs (b)(3)(i) through (b)(3)(v) of this section.

(i) *Project description.* Provide a description of the proposed Energy Efficiency Improvement, including its intended purpose.

(ii) *Qualifications of EEI provider(s).* Provide a resume or other evidence of the contractor or installer's qualifications and experience with the proposed EEI technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are a qualified installer/contractor.

(iii) *Energy Analysis.* For the most recent 36 months, or the length of ownership if in operation for less than 36 months, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount energy that would have been used and the total cost that would have been incurred if the proposed project was in operation for this same time period.

(iv) *Simple Payback.* Estimate Simple Payback.

(v) *Qualifications of Energy Analysis provider.* Provide the qualifications of the individual or entity which completed the Energy Analysis specified in paragraph (b)(3)(iii) of this section.

(4) *Technical report for Renewable Energy Systems.* Each RES application submitted under this section must include a technical report in accordance with § 4280.110(h) and paragraphs (b)(4)(i) through (b)(4)(iv) of this section.

(i) *Project and resource descriptions.* Provide a description of the project, including its intended purpose and a summary of how the project will be constructed and installed. Identify the project's location and describe the project site. Describe the quality and availability of the renewable resource at the project site.

(ii) *Energy generation.* Identify the amount of Renewable Energy that will be generated once the proposed system is operating at its steady state operating level.

(iii) *Project economic assessment.* Describe the projected financial performance of the proposed project. The description must address Total Project Costs, energy savings, and revenues, including applicable investment and other production incentives accruing from government entities. Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, byproducts, and green tags. Information must be provided to allow the calculation of Simple Payback.

(iv) *Qualifications of key service providers.* Describe the key service providers, including the number of similar systems installed and/or manufactured, professional credentials, licenses, and relevant experience. If specific numbers are not available for similar systems, you may submit an estimation of the number of similar systems.

(c) *Construction planning and performing development for applications submitted under this section.* All Applicants submitting applications under this section must comply with the requirements specified in paragraphs (c)(1) through (c)(3) of this section for construction planning and performing development.

(1) *General.* Paragraphs (a)(1), (a)(2), and (a)(4) of § 4280.124 apply.

(2) *Small acquisition and construction procedures.* Small acquisition and construction procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, equipment and construction of a RES or EEI project with a Total Project Cost of not more than $80,000. The Applicant is solely responsible for the execution of all contracts under this procedure, and Agency review and approval is not required.

(3) *Contractor forms.* Applicants must have each contractor sign, as applicable:

(i) Form RD 400–6 for contracts exceeding $10,000; and

(ii) Form AD–1048 for contracts exceeding $25,000.

(d) *Payment process for applications for RES and EEI projects with Total Project Costs of $80,000 or less.* (1) Upon completion of the project, the grantee must submit to the Agency a copy of the contractor's certification of final completion for the project and a statement that the grantee accepts the work completed. At its discretion, the Agency may require the Applicant to have an Inspector certify that the project is constructed and installed correctly.

(2) The RES or EEI project must be constructed, installed, and operating as described in the technical report prior to disbursement of funds. For Renewable Energy Systems, the system must be operating at the steady state operating level described in the technical report for a period of not less than 30 days, unless this requirement is modified by the Agency, prior to disbursement of funds. Any modification to the 30-day steady state operating level requirement will be based on the Agency's review of the technical report and will be incorporated into the Letter of Conditions.

(3) Prior to making payment, the grantee must provide the Agency with Form RD 1924–9 and Form RD 1924–10, or similar forms, executed by all persons who furnished materials or labor in connection with the contract.

§ 4280.120 Scoring RES and EEI grant applications.

Agency personnel will score each eligible RES and EEI application based on the scoring criteria specified in this section, unless otherwise specified in a **Federal Register** notice, with a maximum score of 100 points possible.

(a) *Environmental benefits.* Five points will be awarded for this criterion if the Applicant has documented in the application that the proposed project will have a positive effect on any of the three impact areas: resource conservation (e.g., water, soil, forest), public health (e.g., potable water, air quality), and the environment (e.g., compliance with the U.S. Environmental Protection Agency's renewable fuel standard(s), greenhouse gases, emissions, particulate matter).

(b) *Quantity of energy generated or saved per REAP grant dollar requested,*

and renewable fuel dispensed through Flexible Fuel Pumps. For RES and EEI projects, points will be awarded for either the amount of energy generation per grant dollar requested, which includes those projects that are replacing energy usage with a renewable source, or the average annual energy savings over the most recent 36 months per grant dollar requested; points will not be awarded for more than one category. For Flexible Fuel Pumps, points will be awarded based on the average annual gallons of renewable fuel estimated to be sold over the first 2 years per grant dollar requested. Ratios of energy generated and energy savings per grant dollar requested and of average annual gallons of renewable fuel estimated to be sold over the first 2 years per grant dollar requested that fall between the levels identified below will be assigned points based on Equations 1, 2, or 3, as applicable, rounded to the nearest hundredth of a point.

(1) *Renewable Energy Systems.* The quantity of energy generated per grant dollar requested will be determined by dividing the projected total annual energy generated by the Renewable Energy System, which will be converted to BTUs, by the grant dollars requested. Points will be awarded based on the annual amount of energy generated per grant dollar requested for the proposed Renewable Energy System as determined using paragraphs (b)(1)(i) and (b)(1)(ii) of this section. A maximum of 25 points will be awarded under this criterion.

(i) The annual energy generated per grant dollar requested will be calculated using Equation 1.

Equation 1: $EG/\$ = (EG_{12}/GR)$

Where:

EG/$ = Energy generated per grant dollar requested.

EG_{12} = Energy generated (BTUs) by the proposed Renewable Energy System over the most recent 12-month period.

GR = Grant amount requested under this subpart.

(ii) If the annual energy generated per grant dollar requested calculated under paragraph (b)(1)(i) of this section is:

(A) Less than 25,000 BTUs annual energy generated per grant dollar requested, points will be awarded as follows: Points awarded = (EG/$)/25,000 × 25 points, where the points awarded are rounded to the nearest hundredth of a point.

(B) 25,000 BTUs annual energy generated per grant dollar or higher, 25 points will be awarded. For example, An Applicant has requested a $2,500 grant to install a small wind Renewable Energy System which will generate 5,000 kilowatt hours (kWh) per year, or 17,060,000 BTUs per year (one kWh equals 3,412 BTUs). Thus, there are 6,824 BTUs per grant dollar requested (17,060,000 BTUs/$2,500). Because this is less than 25,000 BTUs annual energy generated per grant dollar requested, points will be awarded as follows:

Points awarded = 6,824 BTUs/25,000 BTUs × 25 = 6.824

This would be rounded to the nearest hundredth, or to 6.82.

(2) *Energy efficiency improvements.* Energy savings per grant dollar requested will be determined by dividing the average annual energy projected to be saved as determined by the Energy Analysis, Energy Assessment, or Energy Audit for the Energy Efficiency Improvement, which will be converted to BTUs, by the grant dollars requested. Points will be awarded based on the average annual amount of energy saved per grant dollar requested for the proposed Energy Efficiency Improvement as determined using paragraphs (b)(2)(i) and (b)(2)(ii) of this section. A maximum of 25 points will be awarded under this criterion.

(i) The average annual energy saved per grant dollar requested shall be calculated using Equation 2.

Equation 2: $ES/\$ = (ES_{36}/GR)$

Where:

ES/$ = Average annual energy saved per grant dollar requested.

ES_{36} = Average annual energy saved by the proposed Energy Efficiency Improvement over the most recent 36-month period as identified in the Energy Analysis, Energy Assessment, or Energy Audit, as applicable.

GR = Grant amount requested under this subpart.

(ii) If the average annual energy saved per grant dollar requested calculated under paragraph (b)(2)(i) of this section is:

(A) Less than 25,000 BTUs average annual energy saved per grant dollar requested, points will be awarded as follows: Points awarded = (ES/$)/25,000 × 25 points, where the points awarded are rounded to the nearest hundredth of a point.

(B) 25,000 BTUs average annual energy saved per grant dollar requested or higher, 25 points will be awarded. For example, an Applicant has requested a $1,500 grant to install a new boiler. The average BTU usage of the existing boiler for the most recent 36 months prior to submittal of the application was 125,555,000 BTUs per year. If the new boiler had been in place for those same 36 months, the annual average BTU usage is estimated to be 100,000,000 BTUs. Thus, the new boiler is projected to save the Applicant 25,555,000 BTUs per year. Based on this example, there are 17,036.6667 BTUs saved per grant dollar requested (25,555,000 BTUs/$1,500). Because this is less than 25,000 BTUs average annual energy saved per grant dollar requested, points will be awarded as follows:

Points awarded = 17,036.6667 BTUs/25,000 BTUs × 25 = 17.03667

This would be rounded to the nearest hundredth, or to 17.04 points.

(3) *RES—flexible fuel pump(s) for renewable fuels.* If the proposed project is for Flexible Fuel Pump(s), points will be awarded based on the average annual gallons of renewable fuel estimated to be sold over the first 2 years by the pumps per grant dollar requested for the proposed Flexible Fuel Pumps to be installed, as determined using paragraphs (b)(3)(i) and (b)(3)(ii) of this section. A maximum of 25 points will be awarded under this criterion.

(i) The average annual gallons of renewable fuel estimated to be sold over the first 2 years per grant dollar shall be calculated using Equation 3.

Equation 3: $RG_{24}/\$ = (RG_{24}/GR)$

Where:

RG_{24}/$ = Renewable fuel gallons estimated to be sold over the first 2 years per grant dollar requested.

RG_{24} = Average annual renewable gallons estimated to be sold by the Applicant over the first 24-month period.

GR = Grant amount requested under this subpart.

(ii) If the average annual renewable fuel gallons estimated to be sold over the first 2 years per grant dollar requested calculated under paragraph (b)(3)(i) of this section is:

(A) Less than 25 gallons of average annual renewable fuel estimated to be sold over the first 2 years per grant dollar requested, points will be awarded as follows: Points awarded = (RG_{24}/$)/25 × 25 points, where the points awarded are rounded to the nearest hundredth of a point.

(B) 25 gallons of annual average renewable fuel estimated to be sold over the first 2 years per grant dollar or higher, 25 points will be awarded. For example, an Applicant has requested a $7,500 grant to install a Flexible Fuel Pump at a gas station that, based on the technical report, is estimated to sell 100,000 gallons of renewable fuel in the first year and 225,000 gallons of renewable fuel in the second year, for an average annual sales over the first 2 years of 162,500 gallons. This equates to approximately 21.67 renewable fuel gallons per grant dollar requested (162,500 gallons/$7,500). Because this is less than 25 gallons estimated to be sold

annually per grant dollar, points will be awarded as follows:

Points awarded = ((162,500 gallons/ $7,500)/25) × 25 = 21.6667

This would be rounded to the nearest hundredth, or to 21.67 points.

(c) *Readiness.* A maximum of 25 points will be awarded based on the level of written commitment an Applicant has from its Matching Fund sources that are documented with a Complete Application. If the Applicant has written commitments from the source(s) confirming commitment of:

(1) 100 percent of the Matching Funds, 25 points will be awarded.

(2) 75 percent up to but not including 100 percent of the Matching Funds, 10 points will be awarded.

(3) 50 percent up to but not including 75 percent of the Matching Funds, 5 points will be awarded.

(4) Less than 50 percent, no points will be awarded.

(d) *Size of Agricultural Producer or Rural Small Business.* Applicants will be awarded points under this criterion based on Applicant size compared to the SBA Small Business size standards categorized by the NAICS found in 13 CFR 121.201. A maximum of 10 points will be awarded under this criterion. For Applicants that are:

(1) One-third or less of the maximum size standard identified by SBA, 10 points will be awarded.

(2) Greater than one-third up to and including two-thirds of the maximum size standard identified by SBA, 5 points will be awarded.

(3) Larger than two-thirds of the maximum size standard identified by SBA, no points will be awarded. *For example,* most agricultural production NAICS codes are limited to $750,000 in Annual Receipts. An Agricultural Producer within one of the agricultural production NAICS codes with Annual Receipts of $250,000 or less would be awarded 10 points, while an Agricultural Producer with Annual Receipts of more than $250,000 Annual Receipts up to and including $500,000, would be awarded 5 points.

(e) *Previous grantees and borrowers.* Points under this scoring criterion will be awarded based on whether the Applicant has received a grant or guaranteed loan under this subpart. A maximum of 10 points will be awarded.

(1) If the Applicant has never received a grant and/or guaranteed loan under this subpart, 10 points will be awarded.

(2) If the Applicant has not received a grant and/or guaranteed loan under this subpart within the 2 previous Federal Fiscal Years, 5 points will be awarded.

(f) *Simple Payback.* A maximum of 15 points will be awarded for either Renewable Energy Systems or Energy Efficiency Improvements; points will not be awarded for more than one category. In either case, points will be awarded based on the Simple Payback of the project.

(1) *Renewable Energy Systems, including Flexible Fuel Pumps.* If the Simple Payback of the proposed project is:

(i) Less than 10 years, 15 points will be awarded;

(ii) 10 years up to but not including 15 years, 10 points will be awarded;

(iii) 15 years up to and including 20 years, 5 points will be awarded; or

(iv) Longer than 20 years, no points will be awarded.

(2) *Energy Efficiency Improvements.* If the Simple Payback of the proposed project is:

(i) Less than 4 years, 15 points will be awarded;

(ii) 4 years up to but not including 8 years, 10 points will be awarded;

(iii) 8 years up to and including 12 years, 5 points will be awarded; or

(iv) Longer than 12 years, no points will be awarded.

(g) *State Director and Administrator priority points.*

A State Director, for its State allocation under this subpart, or the Administrator, for making awards from the National Office reserve, may award up to 10 points to an application if the application is for an under-represented technology or for Flexible Fuel Pumps or if selecting the application would help achieve geographic diversity. In no case shall an application receive more than 10 points under this criterion.

§ 4280.121 Selecting RES and EEI grant applications for award.

(a) *State competitions.* Complete RES and EEI grant applications will be competed against each other twice each calendar year. Complete RES and EEI grant applications received by the Agency by 4:30 p.m. local time on November 30 will be competed against each other. Complete RES and EEI applications received by the Agency by 4:30 p.m. local time on May 31, including any Complete Applications competed in the November 30 competition, but that were not funded, will be competed against each other. If November 30 or May 31 falls on a weekend or a Federally-observed holiday, the next Federal business day will be considered the last day for receipt of a Complete Application.

(b) *Set-aside funding for grants of $20,000 or less.* There will be one State competition for grants of $20,000 or less competing for set-aside funds. Complete RES and EEI grant applications for grants of $20,000 or less received by the Agency by 4:30 p.m. local time on April 30 will be competed against each other. If April 30 falls on a weekend or a Federally-observed holiday, the next Federal business day will be considered the last day for receipt of a Complete Application.

(c) *National competition.* All unfunded eligible State applications that competed in the May 31 State competition and the April 30 set-aside competition for grant of $20,000 or less will be competed against other applications from other States or Tribes at a final National competition.

(d) *Ranking of applications.* Complete applications will be evaluated, processed, and subsequently ranked, and will compete for funding, subject to the availability of grant funding, as described in paragraph (a) of this section. Higher scoring applications will receive first consideration.

(e) *Funding selected applications.* As applications are funded, if insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Agency will provide the Applicant of the higher scoring application the opportunity to reduce the amount of the Applicant's grant request to the amount of funds available. If the Applicant agrees to lower its grant request, the Applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project. At its discretion, the Agency may also elect to allow any remaining multi-year funds to be carried over to the next fiscal year rather than selecting a lower scoring application.

(f) *Disposition of ranked applications not funded.* (1) Based on the availability of funding, a ranked application might not be funded in the first semiannual competition for which it is eligible. All applications not selected for funding will be retained by the Agency for consideration in the next subsequent semiannual competition. Applications not selected for funding after a total of two semiannual competitions will not be considered for funding in future semiannual competitions. However, the application may compete in one National competition as described in paragraph (c) of this section within the Federal Fiscal Year received. If an application is not selected for funding after competing in a total of two semiannual competitions and one National competition, the Agency will discontinue considering the application for potential funding.

(2) Applications not selected for funding in the set-aside competition for grants of $20,000 or less will not be considered for funding in future set-aside competitions. However, applications can compete in the May 31 semiannual State competition and the National competition as described in paragraph (c) of this section within the fiscal year received. If an application is not selected for funding after the May 31 semiannual State competition and the National competition, the Agency will discontinue considering the application for potential funding.

(g) *Commencement of the project.* The Applicant assumes all risks if the choice is made to purchase the technology proposed or start construction of the project to be financed in the grant application after the Complete Application has been received by the Agency, but prior to award announcement.

§ 4280.122 Awarding and administering RES and EEI grants.

The Agency will award and administer RES and EEI grants in accordance with Departmental Regulations and with paragraphs (a) through (h) of this section.

(a) *Letter of conditions.* A Letter of Conditions will be prepared by the Agency, establishing conditions that must be agreed to by the Applicant before any obligation of funds can occur. Upon reviewing the conditions and requirements in the Letter of Conditions, the Applicant must complete, sign, and return the Form RD 1942–26, ''Letter of Intent to Meet Conditions,'' and Form RD 1940–1, ''Request for Obligation of Funds,'' to the Agency if they accept the conditions of the grant; or if certain conditions cannot be met, the Applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the Letter of Conditions by the Applicant before the application will be further processed.

(b) *Insurance requirements.* Agency approved insurance coverage must be maintained for 3 years after the Agency has approved the final performance report unless this requirement is waived or modified by the Agency in writing. Insurance coverage shall include, but is not limited to:

(1) Property insurance, such as fire and extended coverage, will normally be maintained on all structures and equipment.

(2) Liability.

(3) National flood insurance is required in accordance with 7 CFR part 1806, subpart B, of this title, if applicable.

(4) Business interruption insurance for projects with Total Project Costs of more than $200,000.

(c) *Forms and certifications.* The forms specified in paragraphs (c)(1) through (c)(8) of this section will be attached to the Letter of Conditions referenced in paragraph (a) of this section. The forms specified in paragraphs (c)(1) through (c)(7) of this section and all of the certifications must be submitted prior to grant approval. The form specified in paragraph (c)(8) of this section, which is to be completed by contractors, does not need to be returned to the Agency, but must be kept on file by the Grantee.

(1) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(2) Form RD 1940–1.

(3) Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative 1-For Grantees Other than Individuals.''

(4) Form SF–LLL, ''Disclosure of Lobbying Activities,'' if the grant exceeds $100,000 and/or if the grantee has made or agreed to make payment using funds other than Federal appropriated funds to influence or attempt to influence a decision in connection with the application.

(5) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''

(6) Form RD 400–1, ''Equal Opportunity Agreement,'' or successor form.

(7) Form RD 400–4, ''Assurance Agreement,'' or successor form.

(8) Form AD–1048, as signed by the contractor or other lower tier party.

(d) *Evidence of Matching Funds.* If an Applicant submitted written evidence of Matching Funds with the application, the Applicant is responsible for ensuring that such written evidence is still in effect (i.e., not expired) when the grant is executed. If the Applicant did not submit written evidence of Matching Funds with the application, the Applicant must submit such written evidence that is in effect before the Agency will execute the Grant Agreement. In either case, written evidence of Matching Funds must be provided to the Agency before execution of the Grant Agreement and must be in effect (i.e., must not have expired) at the time Grant Agreement is executed.

(e) *SAM number.* Before the Grant Agreement can be executed, the number and expiration date of the Applicant's SAM number are required.

(f) *Grant Agreement.* Once the requirements specified in paragraphs (a) through (e) of this section have been met, the *Grant Agreement* can be executed by the grantee and the Agency. The grantee must abide by all requirements contained in the Grant Agreement, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements might result in termination of the grant and adoption of other available remedies.

(g) *Grant approval.* The grantee will be sent a copy of the executed Form RD 1940–1, the approved scope of work, and the Grant Agreement.

(h) *Power Purchase Agreement.* Where applicable, the grantee shall provide to the Agency a copy of the executed Power Purchase Agreement within 12 months from the date that the Grant Agreement is executed, unless otherwise approved by the Agency.

§ 4280.123 Servicing RES and EEI grants.

The Agency will service RES and EEI grants in accordance with the requirements specified in Departmental Regulations; 7 CFR part 1951, subparts E and O; the Grant Agreement; and paragraphs (a) through (k) of this section.

(a) *Inspections.* Grantees must permit periodic inspection of the project records and operations by a representative of the Agency.

(b) *Programmatic changes.* The grantee must obtain prior Agency approval for any change to the costs, scope, or contractor or vendor of the approved project. Failure to obtain prior approval of any such change could result in such remedies as suspension, termination, and recovery of grant funds. Requests for changes must be submitted in writing to the Agency.

(1) *Changes in project cost or scope.* If there is a significant reduction in project cost or changes in project scope, then the Applicant's funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other factors, including Agency regulations used at the time of grant approval.

(2) *Change of contractor or vendor.* When seeking a change, the grantee must submit to the Agency a written request for approval. The proposed contractor or vendor must have qualifications and experience acceptable to the Agency. The written request must contain sufficient information, which may include a revised technical report as required under § 4280.117(e), § 4280.118(b)(4), § 4280.119(b)(3), or § 4280.119(b)(4), as applicable, to demonstrate to the Agency's satisfaction that such change maintains project integrity. If the Agency determines that project integrity continues to be

demonstrated, the grantee may make the change. If the Agency determines that project integrity is no longer demonstrated, the change will not be approved and the grantee has the following options: continue with the original contractor or vendor; find another contractor or vendor that has qualifications and experience acceptable to the Agency to complete the project; or terminate the grant by providing a written request to the Agency. No additional funding will be available from the Agency if costs for the project have increased. The Agency decision will be provided in writing.

(c) *Transfer of obligations.* Prior to the construction of the project, the grantee may request, in writing, a transfer of obligation to a different (substitute) grantee. Subject to Agency approval provided in writing, an obligation of funds established for a grantee may be transferred to a substitute grantee provided:

(1) The substituted grantee

(i) Is eligible;

(ii) Has a close and genuine relationship with the original grantee; and

(iii) Has the authority to receive the assistance approved for the original grantee; and

(2) The type of RES or EEI technology, the project cost and scope of the project for which the Agency funds will be used remain unchanged.

(d) *Transfer of ownership.* After the construction of the project, the grantee may request, in writing, a transfer of the Grant Agreement to another entity. Subject to Agency approval provided in writing, the Grant Agreement may be transferred to another entity provided:

(1) The entity is determined by the Agency to be an eligible entity under this subpart; and

(2) The type of RES or EEI technology and the scope of the project for which the Agency funds will be used remain unchanged.

(e) *Disposition of acquired property.* Grantees must abide by the disposition requirements outlined in Departmental Regulations.

(f) *Financial management system and records.* The grantee must provide for financial management systems and maintain records as specified in paragraphs (f)(1) and (f)(2) of this section.

(1) *Financial management system.* The grantee will provide for a financial system that will include:

(i) Accurate, current, and complete disclosure of the financial results of each grant;

(ii) Records that identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income; and

(iii) Effective control over and accountability for all funds. The grantee must adequately safeguard all such assets and must ensure that funds are used solely for authorized purposes.

(2) *Records.* The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities except that the records must be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers, and records of the grantee that are pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

(g) *Audit requirements.* If applicable, grantees must provide an annual audit in accordance with 7 CFR part 3052. The Agency may exercise its right to do a program audit after the end of the project to ensure that all funding supported Eligible Project Costs.

(h) *Grant Disbursement.* As applicable, grantees must disburse grant funds as scheduled in accordance with the appropriate construction and inspection requirements in §§ 4280.118, 4280.119 or 4280.124 as applicable of this subpart. Unless required by third parties providing cost sharing payments to be provided on a pro-rata basis with other Matching Funds, grant funds will be disbursed after all other Matching Funds have been expended.

(1) Unless authorized by the Agency to do so, grantees may submit requests for reimbursement no more frequently than monthly. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(2) Grantees must not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

(3) Payments will be made by electronic funds transfer.

(4) Grantees must use SF–271, ''Outlay Report and Request for Reimbursement for Construction Programs,'' or other format prescribed by the Agency to request grant reimbursements.

(5) For a grant awarded to a project with Total Project Costs over $200,000, grant funds will be disbursed in accordance with the above through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Agency until construction of the project is completed, the project is operational, and the project has met or exceeded the steady state operating level as set out in the grant award requirements. In addition, the Agency reserves the right to request additional information or testing if upon a final site visit the 30 day steady state operating level is not found acceptable to the Agency.

(i) *Monitoring of project.* Grantees are responsible for ensuring that all activities are performed within the approved scope of work and that funds are only used for approved purposes.

(1) Grantees shall constantly monitor performance to ensure that:

(i) Time schedules are being met;

(ii) Projected work by time periods is being accomplished;

(iii) Financial resources are being appropriately expended by contractors (if applicable); and

(iv) Any other performance objectives identified in the scope of work are being achieved.

(2) To the extent that resources are available, the Agency will monitor grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency's monitoring of grantees neither:

(i) Relieves the grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only; nor

(ii) Provides recourse or a defense to the grantee should the grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or that give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(j) *Reporting requirements.* Financial and project performance reports must be provided by grantees and contain the information specified in paragraphs (j)(1) through (j)(3)of this section.

(1) *Federal financial reports.* Between grant approval and completion of project (i.e., construction), SF–425, ''Federal Financial Report'' will be required of all grantees as applicable on a semiannual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof

prepared by grantee and approved by the Agency.

(2) *Project performance reports.* Between grant approval and completion of project (i.e., construction), grantees must provide semiannual project performance reports and a final project development report containing the information specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this section. These reports are due 30 working days after June 30 and December 31 of each year.

(i) *Semiannual project performance reports.* Each semiannual project performance report must include the following:

(A) A comparison of actual accomplishments to the objectives for that period;

(B) Reasons why established objectives were not met, if applicable;

(C) Reasons for any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure must be accompanied by a statement of the action taken or planned to resolve the situation; and

(D) Objectives and timetables established for the next reporting period.

(ii) *Final project development report.* The final project development report must be submitted 90 days after project completion and include:

(A) A detailed project funding and expense summary; and

(B) A summary of the project's installation/construction process, including recommendations for development of similar projects by future Applicants to the program.

(3) *Outcome project performance reports.* Once the project has been constructed, the grantee must provide the Agency periodic reports. These reports will include the information specified in paragraphs (j)(3)(i) or (j)(3)(ii) of this section, as applicable.

(i) *Renewable Energy Systems.* For RES projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 3 full years, provide a report detailing the information specified in paragraphs (j)(3)(i)(A) through (j)(3)(i)(G) of this section.

(A) Type of technology;

(B) The actual annual amount of energy generated in BTUs, kilowatt-hours, or similar energy equivalents;

(C) Annual income for systems that are selling energy, if applicable, and/or energy savings of the Renewable Energy System;

(D) A summary of the cost of operations and maintenance;

(E) A description of any associated major maintenance or operational problems;

(F) Recommendations for development of future similar projects; and

(G) Actual number of jobs created or saved as a result of the REAP funding.

(ii) *Energy Efficiency Improvements.* For EEI projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years, provide a report detailing, including calculations and any assumptions:

(A) The actual amount of energy saved annually as determined by the difference between:

(1) The annual amount of energy used by the project with the project in place and

(2) The annual average amount of energy used for the 36 month period prior to application submittal as reported in the application; and

(B) Actual number of jobs created or saved as a result of the REAP funding.

(k) *Grant close-out.* Grant close-out must be performed in accordance with the requirements specified in Departmental Regulations.

§ 4280.124 Construction planning and performing development.

(a) *General.* The following requirements are applicable to all procurement methods specified in paragraph (f) of this section.

(1) *Maximum open and free competition.* All procurement transactions, regardless of procurement method and dollar value, must be conducted in a manner that provides maximum open and free competition. Procurement procedures must not restrict or eliminate competition. Competitive restriction examples include, but are not limited to, the following: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying material(s), the grantee and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. The Agency will consider any recommendation made by the grantee's consultant concerning the technical design and choice of materials to be used for such a project. If the Agency determines that a design or material, other than those that were recommended, should be considered by including them in the procurement process as an acceptable design or material in the project, the Agency will provide such Applicant or grantee with a comprehensive justification for such a determination. The justification will be documented in writing.

(2) *Equal employment opportunity.* For all construction contracts and grants in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The Applicant, or the lender and borrower, as applicable, is responsible for ensuring that the contractor complies with these requirements.

(3) *Surety.* Any contract exceeding $100,000 for procurement will require surety, except as provided for in paragraph (a)(3)(v) of this section.

(i) Surety covering both performance and payment will be required. The United States, acting through the Agency, will be named as co-obligee on all surety unless prohibited by State or Tribal law. Surety may be provided as specified in paragraphs (a)(3)(i)(A) or (a)(3)(i)(B) of this section.

(A) Surety in the amount of 100 percent of the contract cost may be provided using either:

(*1*) A bank letter of credit; or

(*2*) Performance bonds and payment bonds. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the project is located.

(B) Cash deposit in escrow of at least 50 percent of the contract amount. The cash deposit cannot be from funds awarded under this subpart.

(ii) The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety are necessary, bid documents must contain provisions for such alternative types of surety. The use of surety other than performance bonds and payment bonds requires concurrence by the Agency after submission of a justification to the Agency together with the proposed form of escrow agreement or letter of credit.

(iii) For contracts of lesser amounts, the grantee may require surety.

(iv) When surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Forms RD 1924–9 and RD

1924–10 can be obtained at the local Rural Development office and used for this purpose. Other similar forms may be used with Rural Development State Office concurrence.

(v) Exceptions may be granted to surety for any of the following situations:

(A) Small acquisition and construction procedures as specified in § 4280.118(c)(2) or § 4280.119(c)(2) as applicable are used.

(B) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are $200,000 or less.

(C) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are more than $200,000 and the following requirements can be met:

(*1*) The project involves two or fewer subcontractors; and

(*2*) The equipment manufacturer or provider must act as the general contractor.

(D) Other construction projects that have only one contractor performing work.

(4) *Grantees accomplishing work.* In some instances, grantees may wish to perform a part of the work themselves. Grantees may accomplish construction by using their own personnel and equipment, provided the grantees possess the necessary skills, abilities, and resources to perform the work. For a grantee to provide a portion of the work, with the remainder to be completed by a contractor:

(i) A clear understanding of the division of work must be established and delineated in the contract;

(ii) Grantees are not eligible for payment for their own work as it is not an Eligible Project Cost;

(iii) Warranty requirements applicable to the technology must cover the grantee's work;

(iv) Inspection and acceptance of the grantee's work will be completed by either:

(A) An Inspector that will:

(*1*) Inspect, as applicable, and accept construction; and

(*2*) Furnish inspection reports.

(B) A licensed engineer that will:

(*1*) Prepare design drawings and specifications;

(*2*) Inspect, as applicable, and accept construction; and

(*3*) Furnish inspection reports.

(b) *Forms used.* Technical service and procurement documents must be approved by the Agency and may be used only if they are customarily used in the area and protect the interest of the Applicant and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract will become effective until concurred in writing by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(c) *Technical services.* Unless the requirements of paragraph (c)(4) of this section can be met, all RES and EEI projects with Total Project Costs greater than $400,000 require:

(1) The design, installation monitoring, testing prior to commercial operation, and project completion certification be completed by a licensed professional engineer (PE) or team of licensed PEs. Licensed PEs may be ''in-house'' PEs or contracted PEs.

(2) Any contract for design services must be subject to Agency concurrence.

(3) Engineers must be licensed in the State where the project is to be constructed.

(4) The Agency may grant an exception to the requirements of paragraphs (c)(1) through (c)(3) of this section if the following requirements are met:

(i) State or Tribal law does not require the use of a licensed PE; and

(ii) The project is not complex, as determined by the Agency, and can be completed to meet the requirements of this program without the services of a licensed PE.

(d) *Design policies.* Final plans and specifications must be reviewed by the Agency and approved prior to the start of construction. Facilities funded by the Agency must meet the following design requirements, as applicable:

(1) *Environmental review.* Facilities financed by the Agency must undergo an environmental analysis in accordance with the National Environmental Policy Act and 7 CFR part 1940, subpart G of this title. Project planning and design must not only be responsive to the grantee's needs but must consider the environmental consequences of the proposed project. Project design must incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review. If such actions are taken, the Agency has the right to withdraw and discontinue processing the application.

(2) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed must be developed in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) as implemented by 41 CFR 101–19.6, section 504 of the Rehabilitation Act of 1973 (42 U.S.C 1474 *et seq.*) as implemented by 7 CFR parts 15 and 15b, and Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) *Energy/environment.* Project design shall consider cost effective energy-efficient and environmentally-sound products and services.

(4) *Seismic safety.* All new structures, fully or partially enclosed, used or intended for sheltering persons or property will be designed with appropriate seismic safety provisions in compliance with the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction. Designs of components essential for system operation and substantial rehabilitation of structures that are used for sheltering persons or property shall incorporate seismic safety provisions to the extent practicable as specified in 7 CFR part 1792, subpart C.

(e) *Contract Methods.* This paragraph identifies the three types of contract methods that can be used for projects funded under this subpart. The procurement methods, which are applicable to each of these contract methods, are specified in paragraph (f) of this section.

(1) *Traditional method or design-bid-build.* The services of the consulting engineer or architect and the general construction contractor shall normally be procured from unrelated sources in accordance with the following paragraphs.

(i) *Solicitation of offers.* Solicitation of offers must:

(A) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary will set forth those

minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors must be clearly stated.

(B) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(ii) *Contract pricing.* Cost plus a percentage of cost method of contracting must not be used.

(iii) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(A) An engineer or architect as an individual or entity who has prepared plans and specifications or who will be responsible for monitoring the construction;

(B) Any entity in which the grantee's architect or engineer is an officer, employee, or holds or controls a substantial interest in the grantee;

(C) The grantee's governing body officers, employees, or agents;

(D) Any member of the grantee's Immediate Family or partners in paragraphs (e)(1)(iii)(A), (e)(1)(iii)(B), or (e)(1)(iii)(C) of this section; or

(E) An entity which employs, or is about to employ, any person in paragraph (e)(1)(iii)(A), (e)(1)(iii)(B), (e)(1)(iii)(C), or (e)(1)(iii)(D) of this section.

(iv) *Contract award.* Contracts must be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must include, but not be limited to, matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts must not be made with parties who are suspended or debarred.

(2) *Design/Build Method.* The Design/Build Method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used with Agency written approval.

(i) *Concurrence information.* The Applicant will request Agency concurrence by providing the Agency at least the information specified in paragraphs (e)(2)(i)(A) through (e)(2)(i)(H) of this section.

(A) The grantee's written request to use the Design/Build Method with a description of the proposed method.

(B) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It shall include a nontechnical statement summarizing the work to be performed by the contractor, the results expected, and a proposed construction schedule showing the sequence in which the work is to be performed.

(C) A proposed firm-fixed-price contract for the entire project which provides that the contractor will be responsible for any extra cost which result from errors or omissions in the services provided under the contract, as well as compliance with all Federal, State, local, and Tribal requirements effective on the contract execution date.

(D) Where noncompetitive negotiation is proposed and found, by the Agency, to be an acceptable procurement method, then the Agency will evaluate documents indicating the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(E) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the project.

(F) Evidence that a qualified construction Inspector who is independent of the contractor has or will be hired.

(G) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by the Agency prior to the start of construction.

(H) The grantee's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the grantee has the legal authority to enter into and fulfill the contract.

(ii) *Agency concurrence of Design/Build Method.* The Agency will review the material submitted by the Applicant. When all items are acceptable, the Agency approval official will concur in the use of the Design/Build Method for the proposal.

(iii) *Forms used.* Agency approved contract documents must be used provided they are customarily used in the area and protect the interest of the Applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred, in writing, by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(iv) *Contract provisions.* Contracts will have a listing of attachments and must contain the following:

(A) The contract sum;

(B) The dates for starting and completing the work;

(C) The amount of liquidated damages, if any, to be charged;

(D) The amount, method, and frequency of payment;

(E) Surety provisions that meet the requirements of paragraph (a)(3) of this section;

(F) The requirement that changes or additions must have prior written approval of the Agency as identified in the letter of conditions;

(G) Contract review and concurrence. The grantee's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are in compliance with Federal, State, or Tribal law, and that the persons executing these documents have been properly authorized to do so. The contract documents, engineer's recommendation for award, and bid tabulation sheets will be forwarded to the Agency for concurrence prior to awarding the contract. All contracts will contain a provision that they are not effective until they have been concurred, in writing, by the Agency;

(H) This part does not relieve the grantee of any responsibilities under its contract. The grantee is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of Agency funding. These include, but are not limited to, source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the applicable local, State, Tribal, or Federal authority; and

(3) *Construction Management.* Construction Managers as a Constructor (CMc) acts in the capacity of a General Contractor and is financially and professionally responsible for the construction. This type of Construction Management is also referred to as Construction Manager ''At Risk.'' The construction contract is between the grantee and the CMc. The CMc in turn subcontracts for some or all of the work. The CMc will need to carry the Agency required 100 percent surety and insurance, as required under paragraph (a)(3) of this section. Projects using construction management must follow the requirements of (e)(2)(i) through (e)(2)(iv) of this section.

(f) *Procurement methods.* Procurement must be made by one of the following methods: competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) are the preferred procurement method for construction contracts.

(1) *Competitive sealed bids.* In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method, the following will apply:

(i) At a sufficient time prior to the date set for opening of bids, bids must be solicited from an adequate number of qualified sources. In addition, the invitation must be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (f)(1) of this section.

(iii) All bids must be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award must be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs will be considered in determining which bid is lowest.

(v) The Applicant, with the concurrence of the Agency, will consider the amount of the bids or proposals, and all conditions listed in the invitation. On the basis of these considerations, the Applicant will select and notify the lowest responsible bidder. The contract will be awarded using Form RD 1924–6, ''Construction Contract,'' or a similar Agency-approved document.

(vi) Any or all bids may be rejected by the grantee when it is in their best interest.

(2) *Competitive negotiation.* In competitive negotiations, proposals are requested from a number of sources. Negotiations are normally conducted with more than one of the sources submitting offers (offerors). Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications are necessary. If competitive negotiation is used for procurement, the following requirements will apply:

(i) Proposals must be solicited from two qualified sources, unless otherwise approved by the Agency, to permit reasonable competition consistent with the nature and requirements of the procurement.

(ii) The Request for Proposal must identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The grantee must provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the grantee, price and other factors considered. Unsuccessful offerors must be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby the offerors' qualifications are evaluated and the most qualified offeror is selected, subject to negotiations of fair and reasonable compensation.

(3) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source. Noncompetitive negotiation may be used when the award of a contract is not feasible under small acquisition and construction procedures, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(i) After solicitation of a number of sources, competition is determined inadequate; or

(ii) No acceptable bids have been received after formal advertising.

(4) *Additional procurement methods.* The grantee may use additional innovative procurement methods provided the grantee receives prior written approval from the Agency. Contracts will have a listing of attachments and the minimum provisions of the contract will include:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages to be charged;

(iv) The amount, method, and frequency of payment;

(v) Whether or not surety bonds will be provided; and

(vi) The requirement that changes or additions must have prior written approval of the Agency.

(g) *Contracts awarded prior to applications.* Applicants awarding contracts prior to filing an application must comply with 7 CFR 1780.74.

(h) *Contract administration.* Contract administration must comply with 7 CFR 1780.76. If another authority, such as a Federal, State, or Tribal agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency will accept copies of their reports or forms as meeting oversight requirements of the Agency.

Renewable Energy System and Energy Efficiency Improvement Guaranteed Loans

§ 4280.125 Compliance with §§ 4279.29 through 4279.99.

All loans guaranteed under this subpart must comply with the provisions found in §§ 4279.29 through 4279.99 of this chapter, except that the provisions of § 4279.71 of this chapter are not applicable.

§ 4280.126 Guarantee/annual renewal fee.

Except for the conditions for receiving reduced guarantee fee and unless otherwise specified in a **Federal Register** notice, the provisions specified in § 4279.107 of this chapter apply to loans guaranteed under this subpart.

§ 4280.127 Borrower eligibility.

To receive a RES or EEI guaranteed loan under this subpart, a borrower must be eligible under § 4280.109. In addition, borrower must meet the requirements of paragraphs (a) through (e) of this section. Borrowers who receive a loan guaranteed under this subpart must continue to meet the requirements specified in this section.

(a) *Type of borrower.* The borrower must be an Agricultural Producer or Rural Small Business.

(b) *Ownership.* The borrower must:

(1) Own or be the prospective owner of the project; and

(2) Own or control the site for the project at the time of application and, if the loan is guaranteed under this subpart, for the term of the loan.

(c) *Revenues and expenses.* The borrower must have available, at the time of application, satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the term of the loan. In

addition, the borrower must control the revenues and expenses of the project, including its operation and maintenance, for which the loan is sought. Notwithstanding the provisions of this paragraph, the borrower may employ a Qualified Consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(d) *Legal authority and responsibility.* Each borrower and lender must have the legal authority necessary to apply for and carry out the purpose of the guaranteed loan.

(e) *Universal identifier and SAM.* Unless exempt under 2 CFR 25.110, the borrower must:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by the Agency; and

(3) Provide its DUNS number in each application or plan it submits to the Agency.

§ 4280.128 Project eligibility.

For a RES or EEI project to be eligible to receive a guaranteed loan under this subpart, the project must meet each criteria specified in § 4280.113(a) through (e). In addition, the purchase of an existing RES that meets the criteria specified in § 4280.113(b) through (f) is an eligible project under this section.

§ 4280.129 Guaranteed loan funding.

(a) The amount of the loan that will be made available to an eligible project under this subpart will not exceed 75 percent of total Eligible Project Costs. Eligible Project Costs are specified in paragraph (e) of this section. Ineligible project costs are identified in paragraph (f) of this section.

(b) The minimum amount of a guaranteed loan made to a borrower will be $5,000, less any program grant amounts. The maximum amount of a guaranteed loan made to a borrower is $25 million.

(c) The percentage of guarantee, up to the maximum allowed by this section, will be negotiated between the lender and the Agency. The maximum percentage of guarantee is:

(1) 85 percent for loans of $600,000 or less;

(2) 80 percent for loans greater than $600,000 up to and including $5 million;

(3) 70 percent for loans greater than $5 million up to and including $10 million; and

(4) 60 percent for loans greater than $10 million.

(d) The total amount of the loans guaranteed under this subpart to one borrower, including the guaranteed and unguaranteed portion, the outstanding principal, and interest balance of any existing loans guaranteed under this program and the new loan request, must not exceed $25 million.

(e) Eligible Project Costs are only those costs associated with the items identified in § 4280.115(c) and paragraphs (e)(1) through (e)(4) of this section, as long as the items are an integral and necessary part of the Renewable Energy System or Energy Efficiency Improvement. The Eligible Project Costs identified in paragraphs (e)(1) through (e)(4) of this section cannot exceed more than 5 percent of the loan amount.

(1) Working capital.

(2) Land acquisition.

(3) Routine lender fees, as described in § 4279.120(a) of this chapter.

(4) Energy Analyses, Energy Assessments, Energy Audits, technical reports, business plans, and Feasibility Studies completed and acceptable to the Agency, except if any portion was financed by any other Federal or State grant or payment assistance, including, but not limited to, a REAP Energy Analysis, Energy Assessment, or Energy Audit, Feasibility Study, or REDA grant.

(f) Ineligible project costs include, but are not limited to costs identified in §§ 4280.115(d)(1), (d)(2), and (d)(4) through (d)(9) and loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project which involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(g) In determining the amount of a loan awarded, the Agency will take into consideration the criteria specified in § 4280.115(e).

§ 4280.130 Loan processing.

(a) Processing RES and EEI guaranteed loans under this subpart must comply with the provisions found in §§ 4279.120 through 4279.187 of this chapter, except for those sections specified in paragraph (b) of this section, and as provided in §§ 4280.131 through 4280.142.

(b) The provisions found in §§ 4279.150, 4279.155, 4279.161, and 4279.175 of this chapter do not apply to loans guaranteed under this subpart.

§ 4280.131 Credit quality.

Except for § 4279.131(d) of this chapter, the credit quality provisions of § 4279.131 of this chapter apply to this subpart. Instead of complying with § 4279.131(d), borrowers must demonstrate evidence of cash equity injection in the project of not less than 25 percent of total Eligible Project Costs. Cash equity injection must be in the form of cash. For guaranteed loan only requests, Federal grant funds may be counted as cash equity.

§ 4280.132 Financial statements.

All financial statements must be in accordance with § 4279.137 of this chapter except that, for Agricultural Producers, the borrower may provide financial information in the manner that is generally required by agricultural commercial lenders.

§ 4280.133 [Reserved]

§ 4280.134 Personal and corporate guarantees.

All personal and corporate guarantees must be in accordance with § 4279.149 of this chapter. In addition, except for Passive Investors, unconditional personal and corporate guarantees for those owners with a beneficial interest greater than or equal to 20 percent of the borrower will be required where legally permissible.

§ 4280.135 Scoring RES and EEI guaranteed loan only applications.

(a) *Evaluation criteria.* The Agency will score each guaranteed loan only application received using the evaluation criteria specified in § 4280.120, except that, in § 4280.120(b), the calculation will be made on the loan amount requested and not on the grant amount requested.

(b) *Minimum score.* The Agency will announce each year in a **Federal Register** notice the minimum score guaranteed loan-only applications must meet in order to be considered for funding in quarterly competitions, as specified in § 4280.138(b). Any application that does not meet the applicable minimum score is only eligible to compete during the last quarter of the Federal Fiscal Year, as specified in § 4280.138(b).

(c) *Notification.* The Agency will notify in writing each lender and borrower whose application does not meet the applicable minimum score.

§ 4280.136 [Reserved]

§ 4280.137 Application and documentation.

The requirements in this section apply to guaranteed loan applications for RES and EEI projects under this subpart.

(a) *General.* Guaranteed loan applications must be submitted in accordance with the guaranteed loan requirements specified in § 4280.110 and in this section.

(b) *Application content for guaranteed loans greater than $600,000.* Each guaranteed loan only application for greater than $600,000 must contain the information specified in paragraphs (b)(1) and (b)(2) of this section.

(1) *Application content.* Each application submitted under this paragraph must contain the information specified in §§ 4280.117(a)(6) through (a)(9) and (b) through (e) and as specified in paragraph (b)(2) of this section, and must present the information in the same order as shown in § 4280.117.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (b) of this section must contain applicable forms, certifications, and agreements specified in paragraphs (b)(2)(i) through (b)(2)(xi) of this section instead of the forms and certifications specified in § 4280.117(a).

(i) A completed Form RD 4279–1, ''Application for Loan Guarantee.''

(ii) Form RD 1940–20.

(iii) Form AD 2106. Although this form is optional, if the applicant has previously submitted the form to the Agency or another Federal agency, the applicant does not need to resubmit the form.

(iv) A personal credit report from an Agency approved credit reporting company for each owner, partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the borrower's business, except Passive Investors and those corporations listed on a major stock exchange.

(v) Appraisals completed in accordance with § 4279.144 of this chapter. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the Applicant must submit an estimated appraisal. Agency approval in the form of a Conditional Commitment may be issued subject to receipt of adequate appraisals. In all cases, a completed appraisal must be submitted prior to the loan being closed.

(vi) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.

(vii) Current personal and corporate financial statements of any guarantors.

(viii) Financial information is required on the total operation of the Agricultural Producer/Rural Small Business and its parent, subsidiary, or affiliates at other locations. All information submitted under this paragraph must be substantiated by authoritative records.

(A) *Historical financial statements.* Provide 3 years of historical financial statements including income statements and balance sheets. Agricultural producers may present historical financial information in the format that is generally required by commercial agriculture lenders.

(B) *Current balance sheet and income statement.* Provide a current balance sheet and income statement presented in accordance with GAAP and dated within 90 days of the application submittal. Agricultural producers may present financial information in the format that is generally required by commercial agriculture lenders or in a similar format used when submitting the same information in support of the borrower's Federal income tax returns.

(C) *Pro forma financial statements.* Provide pro forma balance sheet at start-up of the borrower's business that reflects the use of the loan proceeds or grant award; 3 additional years of financial statements, indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(ix) Lender's complete comprehensive written analysis in accordance with § 4280.131.

(x) A certification by the lender that the borrower is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the borrower's history, projections, equity, and the collateral to be obtained.

(xi) A proposed loan agreement or a sample loan agreement with an attached list of the proposed loan agreement provisions. The following requirements must be addressed in the proposed or sample loan agreement:

(A) Prohibition against assuming liabilities or obligations of others;

(B) Restriction on dividend payments;

(C) Limitation on the purchase or sale of equipment and fixed assets;

(D) Limitation on compensation of officers and owners;

(E) Minimum working capital or current ratio requirement;

(F) Maximum debt-to-net worth ratio;

(G) Restrictions concerning consolidations, mergers, or other circumstances;

(H) Limitations on selling the business without the concurrence of the lender;

(I) Repayment and amortization provisions of the loan;

(J) List of collateral and lien priority for the loan, including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements for corporate and personal guarantors must be updated at least annually once the guarantee is provided;

(K) Type and frequency of financial statements to be required from the borrower for the duration of the loan;

(L) The addition of any requirements imposed by the Agency in its Conditional Commitment;

(M) A reserved section for any Agency environmental requirements; and

(N) A provision for the lender or the Agency to have reasonable access to the project and its performance information during its useful life or the term of the loan, whichever is longer, including the periodic inspection of the project by a representative of the lender or the Agency.

(c) *Application content for guaranteed loans of $600,000 or less.* Each guaranteed loan only application for $600,000 or less must contain the information specified in paragraphs (c)(1) and (c)(2) of this section.

(1) *Application Contents.* If the application is for $200,000 or less, the application must contain the information specified in § 4280.118(b), except as specified in paragraph (c)(2) of this section (e.g., the grant forms under § 4280.117(a) are not required to be submitted), and must present the information in the same order as shown in § 4280.118(b). If the application is for more than $200,000, the application must contain the information specified in § 4280.117, except as specified in paragraph (c)(2) of this section, and must present the information in the same order as shown in § 4280.117.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (c) of this section must use Form RD 4279–1A, ''Application for Loan Guarantee, Short Form,'' and the forms and certifications specified in paragraphs (b)(2)(ii), (b)(2)(iii) (if not previously submitted), (b)(2)(v), (b)(2)(viii), (b)(2)(ix), (b)(2)(x), and (b)(2)(xi) of this section. The lender must have the documentation contained in paragraphs (b)(2)(iv), (b)(2)(vi), and

(b)(2)(vii) available in its files for the Agency's review.

§ 4280.138 Evaluation of RES and EEI guaranteed loan applications.

The provisions of § 4279.165 of this chapter apply to this subpart, although the Agency will determine borrower and project eligibility in accordance with the provisions of this subpart.

§ 4280.139 Selection of RES and EEI guaranteed loan only applications.

Complete and eligible guaranteed loan-only applications that are ready to be approved will be processed according to this section, unless otherwise modified by the Agency in a notice published in the **Federal Register**. Guaranteed loan applications that are part of a grant-guaranteed loan combination request will be processed according to § 4280.165(d).

(a) *Competing applications.* On the first business day of the second month of each Federal fiscal quarter, the Agency will compete each eligible application that is ready to be funded and that has a priority score, as determined under § 4280.135, that meets or exceeds the applicable minimum score. An application that does not meet the minimum score will be competed against all other applications during the last quarter of the Federal Fiscal Year. Higher scoring applications will receive first consideration.

(b) *Funding selected applications.* As applications are funded, the remaining guaranteed funding authority may be insufficient to fund the next highest scoring application or applications in those cases where two or more applications receive the same priority score. The procedures described in paragraphs (b)(1) and (b)(2) of this section may be repeated as necessary in order to consider all applications as appropriate.

(1) If the remaining funds are insufficient to fund the next highest scoring project completely, the Agency will notify the lender and offer the lender the opportunity to accept the level of funds available. If the lender does not accept the offer, the Agency will process the next highest scoring application.

(2) If the remaining funds are insufficient to fund each project that receives the same priority score, the Agency will notify each lender and offer the lender the opportunity to accept the level of funds available and the level of funds the Agency offers to each such lender will be proportional to the amount of the lenders' requests. If funds are still remaining, the Agency may consider funding the next highest scoring project.

(3) Any lender offered less than the full amount requested under either paragraph (b)(1) or (b)(2) of this section may either accept the funds available or can request to compete in the following quarter's competition. Under no circumstances would there be an assurance that the project(s) would be funded in subsequent competitions.

(4) If a lender agrees to the lower loan funding offered by the Agency under either paragraph (b)(1) or (b)(2) of this section, the lender must certify that the purpose(s) of the project can still be met at the lower funding level and must provide documentation that the borrower has obtain the remaining total funds needed to complete the project.

(c) *Disposition of ranked applications not funded.* How the Agency disposes of ranked applications that have not received funding depends on whether the application's priority score is equal to or greater than the minimum score or is less than the minimum score.

(1) An application with a priority score equal to or greater than the minimum score that is not funded in a quarterly competition will be retained by the Agency for consideration in subsequent quarterly competitions. If an application is not selected for funding after four quarterly competitions, including the first quarter in which the application was competed, the application will be withdrawn by the Agency from further funding consideration.

(2) An application with a priority score less than the applicable minimum priority score will be competed during the last quarter of the Federal Fiscal Year in which the application is ready for funding. If the application is not funded, the application will be withdrawn by the Agency from further funding consideration.

(d) *Unused funding.* At the end of each Federal fiscal quarter, the Agency will roll any remaining guaranteed funding authority into the next Federal fiscal quarter. At the end of each Federal Fiscal Year, the Agency may elect at its discretion to allow any remaining multi-year funds to be carried over to the next Federal Fiscal Year rather than selecting a lower scoring application.

(e) *Commencement of the project.* The applicant assumes all risks if the choice is made to purchase the technology proposed or start construction of the project to be financed in the guaranteed loan only application after the complete application has been received by the Agency, but prior to award announcement.

§§ 4280.139–4280.140 [Reserved]

§ 4280.141 Changes in borrower.

All changes in borrowers must be in accordance with § 4279.180 of this chapter, but the eligibility requirements of this subpart apply.

§ 4280.142 Conditions precedent to issuance of Loan Note Guarantee.

In addition to complying with § 4279.181 of this chapter, paragraphs (a) and (b) of this section must be met as applicable.

(a) The project has been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications, conforms with applicable Federal, State, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(b) Where applicable, the lender must provide to the Agency a copy of the executed Power Purchase Agreement.

§ 4280.143 Requirements after project construction.

Once the project has been constructed, the lender must provide the Agency reports from the borrower in accordance with § 4280.123(j)(3), as applicable.

§§ 4280.144–4280.151 [Reserved]

§ 4280.152 Servicing guaranteed loans.

Except as specified in paragraphs (a) and (b) of this section, all loans guaranteed under this subpart must be in compliance with the provisions found in § 4287.101(b) and in §§ 4287.107 through 4287.199 of this chapter.

(a) *Documentation of request.* In complying with § 4287.134(a) of this chapter, all transfers and assumptions must be to eligible borrowers in accordance with § 4280.127.

(b) *Additional loan funds.* In complying with § 4287.134(e) of this chapter, loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under § 4280.137.

§§ 4280.153–4280.164 [Reserved]

Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements

§ 4280.165 Combined funding for Renewable Energy Systems and Energy Efficiency Improvements.

The requirements for a RES or EEI project for which an Applicant is seeking a combined grant and guaranteed loan are specified in this section.

(a) *Eligibility.* All Applicants must be eligible under the requirements

specified in § 4280.109. If the Applicant is seeking a grant, the Applicant must also meet the Applicant eligibility requirements specified in § 4280.112. If the Applicant is seeking a loan, the Applicant must also meet the borrower eligibility requirements specified in § 4280.127. Projects must meet the project eligibility requirements specified in §§ 4280.113 and 4280.128, as applicable.

(b) *Funding.* Funding provided under this section is subject to the limits described in paragraphs (b)(1) and (b)(2) of this section.

(1) The amount of any combined grant and guaranteed loan shall not exceed 75 percent of total Eligible Project Costs and the grant portion shall not exceed 25 percent of total Eligible Project Costs. For purposes of combined funding requests, total Eligible Project Costs are based on the total costs associated with those items specified in §§ 4280.115(c) and 4280.129(e). The Applicant must provide the remaining total funds needed to complete the project.

(2) The minimum combined funding request allowed is $5,000, with the grant portion of the funding request being at least $1,500 for EEI projects and at least $2,500 for RES projects.

(c) *Application and documentation.* When applying for combined funding, the Applicant must submit separate applications for both types of assistance (grant and guaranteed loan). The separate applications must be submitted simultaneously by the lender.

(1) Each application must meet the requirements, including the requisite forms and certifications, specified in §§ 4280.117, 4280.118, 4280.119, and 4280.137, as applicable, and as follows:

(i) Notwithstanding Form RD 4279–1, the SAM number and its expiration date must be provided prior to obligation of funds;

(ii) A combined funding request for a guaranteed loan greater than $600,000 must contain the information specified in § 4280.137(b)(1) and (2); and

(iii) A combined funding request for a guaranteed loan of $600,000 or less must contain the information specified in § 4280.137(c)(1) and (c)(2).

(2) Where both the grant application and the guaranteed loan application provisions request the same documentation, form, or certification, such documentation, form, or certification may be submitted once; that is, the combined application does not need to contain duplicate documentation, forms, and certifications.

(d) *Evaluation.* The Agency will evaluate each application according to § 4280.116(c). The Agency will select applications according to applicable procedures specified in § 4280.121 unless modified by this section. A combination loan and grant request will be selected based upon the grant score of the project.

(e) *Interest rate and terms of loan.* The interest rate and terms of the guaranteed loan for the loan portion of the combined funding request will be determined based on the procedures specified in §§ 4279.125 and 4279.126 of this chapter for guaranteed loans.

(f) *Other provisions.* In addition to the requirements specified in paragraphs (a) through (e) of this section, the combined funding request is subject to the other requirements specified in this subpart, including, but not limited to, processing and servicing requirements, as applicable, as described in paragraphs (f)(1) through (f)(6) of this section.

(1) All other provisions of §§ 4280.101 through 4280.111 apply to the combined funding request.

(2) All other provisions of §§ 4280.112 through 4280.123 apply to the grant portion of the combined funding request and § 4280.124 applies if the project for which the grant is sought has a Total Project Cost over $200,000.

(3) All other provisions of §§ 4280.125 through 4280.152 apply to the guaranteed loan portion of the combined funding request.

(4) All guarantee loan and grant combination applications that are ranked, but not funded, will be processed in accordance with provisions found in § 4280.121(d), (e), and (f).

(5) Applicants whose combination applications are approved for funding must utilize both the loan and the grant. The guaranteed loan will be closed prior to grant funds being disbursed. The Agency reserves the right to reduce the total loan guarantee and grant award as appropriate.

(6) Compliance reviews will be conducted on a combined grant and guaranteed loan request. The compliance review will encompass the entire operation, program, or activity to be funded with Agency assistance.

§§ 4280.166–4280.168 [Reserved]

Renewable Energy System Feasibility Study Grants

§ 4280.169 General provisions.

Grants for Feasibility Studies must be for specific Renewable Energy Systems that meet the project eligibility criteria specified for RES projects under this subpart. Applications for industry-level feasibility studies, also known as feasibility study templates or guides, are not eligible because the assistance is not provided to a specific project. In addition, any application in which the Applicant proposes to conduct any portion of the Feasibility Study is not eligible. The Feasibility Study completed for the proposed RES project must conform to Appendix D of this subpart.

§ 4280.170 Applicant eligibility.

To be eligible for a RES Feasibility Study grant under this subpart, the Applicant must meet the criteria specified in paragraphs (a) through (d) of this section.

(a) The Applicant must be an Agricultural Producer or a Rural Small Business;

(b) The Applicant must be the prospective owner of the Renewable Energy System for which the Feasibility Study grant is sought and must be the prospective owner or controller of the site for the useful life of the property on which said Renewable Energy System would be placed; and

(c) The Applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(d) Unless exempt under 2 CFR 25.110, the Applicant must

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by the Agency; and

(3) Provide its DUNS number in each application or plan it submits to the Agency.

§ 4280.171 Eligibility of RES projects for Feasibility Study grants.

Only RES projects that meet the requirements specified in this section are eligible for Feasibility Study grants under this subpart. The RES project for which the Feasibility Study grant is sought shall meet the requirements specified in paragraphs (a) through (e) of this section.

(a) Be for a project as described in § 4280.113 (a)(1) through (a)(3) and (a)(4)(i) or § 4280.128.

(b) Be for a project located in a Rural Area if the Applicant is a Rural Small Business, or in a Rural or non-Rural Area if the Applicant is an Agricultural Producer. If the Agricultural Producer's operation is in a non-Rural Area, then the Feasibility Study can only be for a Renewable Energy System on integral components of or directly related to the Agricultural Producer's operation, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(c) Be for technology that is Commercially Available, and that is replicable.

(d) Not have had a Feasibility Study already completed for it with Federal and/or State assistance.

(e) The project must be located in the same State where the Applicant has a place of business.

(f) The Applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the Applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

§ 4280.172 [Reserved]

§ 4280.173 Grant funding for RES Feasibility Studies.

(a) *Maximum grant amount.* The maximum amount of grant funds that will be made available for an eligible RES Feasibility Study project under this subpart to any one recipient will not exceed $100,000 or 25 percent of the total Eligible Project Cost of the study, whichever is less. Eligible Project Costs are specified in paragraph (b) of this section.

(b) *Eligible Project Costs.* Only those costs incurred after the date a Complete Application has been received by the Agency will be considered eligible. Eligible Project Costs for RES Feasibility Studies must be specific to the completion of the Feasibility Study and can include, but are not limited to, the items listed in paragraphs (b)(1) and (b)(2) of this section.

(1) Payment of services to Qualified Consultant(s) to perform the necessary evaluations needed for the Feasibility Study and to complete the Feasibility Study.

(2) Other studies or assessments to evaluate the economic, technical, market, financial, and management feasibility of the Renewable Energy System that are needed to complete the Feasibility Study (e.g., resource assessment, transmission study, or environmental study).

(c) *Ineligible project costs.* Ineligible project costs for RES Feasibility Studies include, but are not limited to:

(1) Costs associated with selection of engineering, architectural, or environmental services;

(2) Designing, bidding, or contract development for the proposed project;

(3) Permitting and other licensing costs required to construct the project;

(4) Payment of any judgment or debt owed to the United States.

(5) Any goods or services provided by a person or entity who has a conflict of interest as provided in § 4280.106;

(6) Any costs of preparing the application package for funding under this subpart; and

(7) Funding of political or lobbying activities.

§§ 4280.174–4280.175 [Reserved]

§ 4280.176 Feasibility Study grant applications—content.

Applications for Feasibility Study grants must contain the information specified in paragraphs (a) through (n) of this section, except that Form AD 2106 is optional, and must be presented in the same order.

(a) Form SF–424.

(b) Form SF–424A, ''Budget Information—Non-Construction Programs'' (as applicable).

(c) Form SF–424B, ''Assurances—Non-Construction Programs'' (as applicable).

(d) Form SF–424C (as applicable).

(e) Form SF–424D (as applicable).

(f) Form AD 2106. Although this form is optional, if the applicant has previously submitted the form to the Agency or another Federal agency, the applicant does not need to resubmit the form.

(g) Form RD 1940–20 (as applicable).

(h) Identify the primary NAICS code applicable to the Applicant's operation if known or a description of the operation in enough detail for the Agency to determine the primary NAICS code;

(i) Certification that the Applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the state(s) where the Applicant has a place of business.

(j) The Applicant must identify whether or not the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(k) A proposed scope of work, which includes:

(1) A brief description of the proposed Renewable Energy System that the Feasibility Study will evaluate;

(2) The timeframe for completion of the Feasibility Study;

(3) The experience of the Qualified Consultant completing the Feasibility Study, including the number of similar Feasibility Studies the Qualified Consultant has performed, the number of years the Qualified Consultant has been performing a similar service, and corresponding resumes; and

(4) The identification of the amount and source of Matching Funds the Applicant is proposing to use for the proposed Feasibility Study and the amount of funds for which the Applicant has received written commitments at the time the application is submitted. Include documentation verifying the written commitment(s) that the Applicant has received from its Matching Funding sources;

(l) A certification that the Applicant has not received any other Federal or State assistance for a Feasibility Study for the subject Renewable Energy System.

(m) If the Applicant is a Rural Small Business, certification that the Feasibility Study grant will be for a RES project that is located in a Rural Area.

(n) A certification providing:

(1) For Rural Small Businesses, the total Annual Receipts for the past 3 years and number of employees of the business and any parent, subsidiary or affiliates at other locations for Rural Small Businesses. If the Rural Small Business Applicant has not engaged in business operations for the past 3 years, than information for as long as the Rural Small Business Applicant has been in business must be submitted. New businesses that do not have any Annual Receipts must provide projections based upon a typical operating year for a 2-year time period; or

(2) For Agricultural Producers, the gross market value of the Applicant's agricultural products, gross agricultural income of the Applicant, and gross nonfarm income of the Applicant for the calendar year preceding the year in which the application is being submitted.

§ 4280.177 Evaluation of Feasibility Study grant applications.

Section 4280.116(c) applies to this subpart, except for § 4280.116(c)(4).

§ 4280.178 Scoring Feasibility Study grant applications.

The Agency will score each Feasibility Study application based on the evaluation criteria specified in paragraphs (a) through (f) of this section, with a maximum score of 100 points possible.

(a) *Commitment of funds for the RES Feasibility Study.* A maximum of 25 points will be awarded based on the level of written commitment an Applicant has from its Matching Funds source(s) that are documented with a Complete Application. If the Applicant has written commitments from the source(s) confirming commitment of:

(1) 100 percent of the Matching Funds, 25 points will be awarded.

(2) 75 percent up to but not including 100 percent of the Matching Funds, 10 points will be awarded.

(3) 50 percent up to but not including 75 percent of the Matching Funds, 5 points will be awarded.

(4) Less than 50 percent, no points will be awarded.

(b) *Size of Agricultural Producer or Rural Small Business.* Applicants will be awarded points under this criterion based on Applicant size compared to the SBA Small Business size standards categorized by the NAICS codes found in 13 CFR 121.201. A maximum of 10 points will be awarded under this criterion. For Applicants that are:

(1) One-third or less of the maximum size standard identified by SBA, 10 points will be awarded.

(2) Greater than one-third up to and including two-thirds of the maximum size standard identified by SBA, 5 points will be awarded.

(3) Larger than two-thirds of the maximum size standard identified by SBA, no points will be awarded. For example, most agricultural production NAICS codes are limited to $750,000 in Annual Receipts. An Agricultural Producer within one of the agricultural production NAICS codes with Annual Receipts of $250,000 or less would be awarded 10 points, while an Agricultural Producer with Annual Receipts of more than $250,000 Annual Receipts up to and including $500,000, would be awarded 5 points.

(c) *Experience with the proposed technology of the Qualified Consultant identified to perform the RES Feasibility Study.* A maximum of 25 points can be awarded under this section. If the entity's experience in the field of study for the technology being proposed is:

(1) 10 or more years, 25 points will be awarded.

(2) 5 or more years, but less than 10 years, 20 points will be awarded.

(3) 2 or more years, but less than 5 years, 10 points will be awarded.

(4) Less than 2 years, no points will be awarded.

(d) *Size of RES Feasibility Study grant request.* A maximum of 20 points can be awarded under this criterion. If the grant request is:

(1) $20,000 or less, 20 points will be awarded.

(2) Greater than $20,000 up to and including $50,000, 10 points will be awarded.

(3) Greater than $50,000, no points will be awarded.

(e) *Resources to implement project.* Points will be awarded under this criterion depending on whether the RES project for which the Applicant is seeking to conduct a Feasibility Study qualifies for local or State program assistance for the construction of the proposed RES project or, once it has been constructed, for its operation. Points can be awarded for both types of assistance, for a maximum of 10 points.

(1) If the Applicant has identified local programs, 5 points will be awarded.

(2) If the Applicant has identified State programs, 5 points will be awarded.

(f) *Previous grantees and borrowers.* Points under this scoring criterion will be awarded based on whether the Applicant has received a grant or guaranteed loan under this subpart. A maximum of 10 points will be awarded.

(1) If the Applicant has never received a grant and/or guaranteed loan under this subpart, 10 points will be awarded.

(2) If the Applicant has not received a grant and/or guaranteed loan under this subpart within the 2 previous Federal Fiscal Years, 5 points will be awarded.

§ 4280.179 Selecting Feasibility Study grant applications for award.

(a) *Application competitions.* Complete RES Feasibility Study grant applications will be competed against each other twice each calendar year. Complete RES Feasibility Study grant applications received by the Agency by 4:30 p.m. local time on November 30 will be competed against each other. Complete RES Feasibility Study grant applications received by the Agency by 4:30 p.m. local time on May 31, including any Complete Applications competed in the November 30 competition, but that were not funded, will be competed against each other. If November 30 or May 31 falls on a weekend or a Federally-observed holiday, the next Federal business day will be considered the last day for receipt of a Complete Application.

(b) *Ranking of applications.* Complete applications will be evaluated, processed, and subsequently ranked, and will compete for funding, subject to the availability of grant funding, as described in paragraph (a) of this section. Higher scoring applications will receive first consideration.

(c) *Funding selected applications.* As applications are funded, if insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Administrator will provide the Applicant of the higher scoring application the opportunity to reduce the amount of the Applicant's grant request to the amount of funds available. If the Applicant agrees to lower its grant request, the Applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project. At its discretion, the Agency may also elect to allow any remaining multi-year funds to be carried over to the next fiscal year rather than selecting a lower scoring application.

(d) *Disposition of ranked applications not funded.* Based on the availability of funding, a ranked application might not be funded in the first semiannual competition for which it is eligible. All applications not selected for funding will be retained by the Agency for consideration in the next subsequent semiannual competition. The Agency will discontinue considering the application for potential funding after the application has competed in a total of two semiannual competitions.

(e) *Commencement of the project.* The Applicant assumes all risks if the choice is made to purchase the technology proposed or start construction of the project to be financed in the grant application after the Complete Application has been received by the Agency.

§ 4280.180 [Reserved]

§ 4280.181 Awarding and administering Feasibility Study grants.

The Agency will award and administer RES Feasibility Study grants in accordance with Departmental Regulations and with the procedures and requirements specified in § 4280.122, except as specified in paragraphs (a) and (b) of this section.

(a) The insurance specified in § 4280.122(b) does not apply, unless equipment is purchased.

(b) The Power Purchase Agreement specified in § 4280.122(h) does not apply.

§ 4280.182 Servicing Feasibility Study grants.

The Agency will service RES Feasibility Study grants in accordance with the requirements specified in Departmental Regulations; 7 CFR part 1951, subparts E and O; the Grant Agreement; and the requirements in § 4280.123 except as specified in paragraph (a) through (c) of this section.

(a) *Grant disbursement.* RES Feasibility Study grant funds will be expended on a pro rata basis with Matching Funds.

(1) Form SF–270, ''Request for Advance or Reimbursement,'' or other format prescribed by the Agency shall be used to request grant reimbursements.

(2) RES Feasibility Study grant funds will be disbursed in accordance with the above through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Agency until a Feasibility study acceptable to the Agency has been submitted.

(b) *Final deliverables.* Upon completion of the Feasibility Study, the grantee shall submit the following to the Agency:

(1) A Feasibility Study acceptable to the Agency; and

(2) Form SF–270.

(c) *Outcome project performance reports.* Beginning the first full year after the Feasibility Study has been completed, grantees must report annually for 2 years on the following:

(1) Is the RES project for which the Feasibility Study was conducted underway? If ''yes,'' describe how far along the RES project is (e.g., financing has been secured, site has been secured, construction contracts are in place, project is completed). If ''no,'' discuss why the RES project is not underway.

(2) Is the RES project complete? If so, what is the actual amount of energy being produced?

§§ 4280.183–4280.185 [Reserved]

Energy Audit (EA) and Renewable Energy Development Assistance (REDA) Grants

§ 4280.186 Applicant eligibility.

To be eligible for an EA grant or a REDA grant under this subpart, the Applicant must meet each of the criteria, as applicable, specified in paragraphs (a) through (d) of this section. The Agency will determine an Applicant's eligibility.

(a) The Applicant must be one of the following:

(1) A unit of State, Tribal, or local government;

(2) A land-grant college or university, or other Institution of Higher Education;

(3) A rural electric cooperative;

(4) A Public Power Entity; or

(5) An Instrumentality of a State, Tribal, or local government.

(b) The Applicant must have sufficient capacity to perform the EA or REDA activities proposed in the application to ensure success. The Agency will make this assessment based on the information provided in the application.

(c) The Applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(d) Unless exempt under 2 CFR 25.110, the Applicant must:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by the Agency; and

(3) Provide its DUNS number in each application or plan it submits to the Agency. Generally, the DUNS number is included on Standard Form-424.

§ 4280.187 Project eligibility.

To be eligible for an EA or a REDA grant, the grant funds for a project must be used by the grantee to assist Agricultural Producers or Rural Small Businesses in one or both of the purposes specified in paragraphs (a) and (b) of this section, and must also comply with paragraphs (c) through (f) of this section.

(a) Conducting and promoting Energy Audits.

(b) Conducting and promoting Renewable Energy Development Assistance by providing to Agricultural Producers and Rural Small Businesses recommendations and information on how to improve the energy efficiency of their operations and to use Renewable Energy technologies and resources in their operations.

(c) Energy Audit and Renewable Energy Development Assistance can be provided only to a project located in a Rural Area unless the grantee of such project is an Agricultural Producer. If the project is owned by an Agricultural Producer, the project for which such services are being provided may be located in either a Rural or non-Rural Area. If the Agricultural Producer's project is in a non-Rural Area, then the Energy Audit or Renewable Energy Development Assistance can only be for a Renewable Energy System or Energy Efficiency Improvement on integral components of or directly related to the Agricultural Producer's project, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(d) The Energy Audit or Renewable Energy Development Assistance must be provided to a recipient in a State.

(e) The Applicant must have a place of business in a State.

(f) The Applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the Applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

§ 4280.188 Grant funding for Energy Audit and Renewable Energy Development Assistance.

(a) *Maximum grant amount.* The maximum aggregate amount of EA and REDA grants awarded to any one recipient under this subpart cannot exceed $100,000. Grant funds awarded for EA and REDA projects may be used only to pay Eligible Project Costs, as described in paragraph (b) of this section. Ineligible project costs are listed in paragraph (c) of this section.

(b) *Eligible Project Costs.* Eligible Project Costs for Energy Audits and Renewable Energy Development Assistance are those costs incurred after the date a Complete Application has been received by the Agency and that are directly related to conducting and promoting Energy Audits and Renewable Energy Development Assistance, which include but are not limited to:

(1) Salaries;

(2) Travel expenses;

(3) Office supplies (e.g., paper, pens, file folders); and

(4) Expenses charged as a direct cost or as an indirect cost of up to a maximum of 5 percent for administering the grant.

(c) *Ineligible project costs.* Ineligible project costs for EA and REDA grants include, but are not limited to:

(1) Payment for any construction-related activities;

(2) Purchase or lease of equipment;

(3) Payment of any judgment or debt owed to the United States;

(4) Any goods or services provided by a person or entity who has a conflict of interest as provided in § 4280.106;

(5) Any costs of preparing the application package for funding under this subpart; and

(6) Funding of political or lobbying activities.

(d) *Energy Audits.* A grantee that conducts an Energy Audit must require that, as a condition of providing the Energy Audit, the Agricultural Producer or Rural Small Business pay at least 25 percent of the cost of the Energy Audit. Further, the amount paid by the Agricultural Producer or Rural Small Business will be retained by the grantee as a contribution towards the cost of the Energy Audit and considered program income. The grantee may use the program income to further the objectives of their project or EA services offered during the grant period in accordance with Departmental Regulations.

§ 4280.189 [Reserved]

§ 4280.190 EA and REDA grant applications—content.

(a) Unless otherwise specified in a **Federal Register** notice, Applicants may only submit one EA grant application and one REDA grant application each Federal Fiscal Year. No combination (Energy Audit and Renewable Energy Development Assistance) applications will be accepted.

(b) Applicants must submit Complete Applications consisting of the elements specified in paragraphs (b)(1) through (b)(7) of this section, except that Form AD 2106 is optional.

(1) Form SF–424.

(2) Form SF–424A.

(3) Form SF–424B.

(4) Form AD 2106. Although this form is optional, if the applicant has previously submitted the form to the Agency or another Federal agency, the applicant does not need to resubmit the form.

(5) Certification that the Applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the State(s) or Tribe where the Applicant has a place of business.

(6) The Applicant must identify whether or not the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(7) A proposed scope of work to include the following items:

(i) A brief summary including a project title describing the proposed project;

(ii) Goals of the proposed project;

(iii) Geographic scope or service area of the proposed project and the method and rationale used to select the service area;

(iv) Identification of the specific needs for the service area and the target audience to be served. The number of Agricultural Producers and/or Rural Small Businesses to be served shall be identified including name and contact information, if available, as well as the method and rationale used to select the Agricultural Producers and/or Rural Small Businesses;

(v) Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task. Include whether organizational staff, consultants, or contractors will be used to perform each task. If a project is located in multiple states, resources must be sufficient to complete all projects;

(vi) Marketing strategies to include a discussion on how the Applicant will be marketing and providing outreach activities to the proposed service area ensuring that Agricultural Producers and/or Rural Small Businesses are served;

(vii) Applicant's experience as follows:

(A) If applying for a REDA grant, the Applicant's experience in completing similar REDA activities, including the number of similar projects the Applicant has performed and the number of years the Applicant has been performing a similar service.

(B) If applying for an EA grant, the number of Energy Audits and Energy Assessments the Applicant has completed and the number of years the Applicant has been performing those services;

(C) For all Applicants, the amount of experience in administering EA, REDA, or similar activities as applicable to the purpose of the proposed project. Provide discussion if the Applicant has any existing programs that can demonstrate the achievement of energy savings or energy generation with the Agricultural Producers and/or Rural Small Businesses the Applicant has served. If the Applicant has received one or more awards within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, please describe the achievement; and

(viii) Identify the amount of Matching Funds and the source(s) the Applicant is proposing to use for the project. Provide written commitments for Matching Funds at the time the application is submitted.

§ 4280.191 Evaluation of EA and REDA grant applications.

Section 4280.116(c) applies to EA and REDA grants, except for § 4280.116(c)(4).

§ 4280.192 Scoring EA and REDA grant applications.

The Agency will score each EA and REDA application using the criteria specified in paragraphs (a) through (f) of this section, with a maximum score of 100 points possible.

(a) *Applicant's organizational experience in completing the EA or REDA proposed activity.* The Applicant will be scored based on the experience of the organization in providing Energy Audits or Renewable Energy Development Assistance as applicable to the purpose of the proposed project. The organization must have been in business and provided services for the number of years as identified in the paragraphs below. A maximum of 25 points can be awarded.

(1) More than 10 years of experience, 25 points will be awarded.

(2) At least 5 years and up to and including 10 years of experience, 20 points will be awarded.

(3) At least 2 years and up to and including 5 years of experience, 10 points will be awarded.

(4) Less than 2 years of experience, no points will be awarded.

(b) *Geographic scope of project in relation to identified need.* A maximum of 20 points can be awarded.

(1) If the Applicant's proposed or existing service area is State-wide or includes all or parts of multiple states, and the scope of work has identified needs throughout that service area, 20 points will be awarded.

(2) If the Applicant's proposed or existing service area consists of multiple counties in a single State and the scope of work has identified needs throughout that service area, 15 points will be awarded.

(3) If the Applicant's service area consists of a single county or municipality and the scope of work has identified needs throughout that service area, 10 points will be awarded.

(c) *Number of Agricultural Producers/Rural Small Businesses to be served.* Applicants will be awarded points based on the proposed number of ultimate recipients to be assisted and if the Applicant can identify an actual list of ultimate recipients to be assisted. A maximum of 20 points can be awarded.

(1) If the Applicant plans to provide Energy Audits or Renewable Energy Development Assistance to:

(i) Up to 10 ultimate recipients, 2 points will be awarded.

(ii) Between 11 and up to and including 25 ultimate recipients, 5 points will be awarded.

(iii) More than 25 ultimate recipients, 10 points will be awarded.

(2) If the Applicant provides a list of ultimate recipients, including their name and contact information, that are ready to be assisted, an additional 10 points may be awarded.

(d) *Potential of project to produce energy savings or generation and its attending environmental benefits.* Applicants can be awarded points under both paragraphs (d)(1) and (d)(2) of this section. A maximum of 10 points can be awarded.

(1) If the Applicant has an existing program that can demonstrate the achievement of energy savings or energy generation with the Agricultural Producers and/or Rural Small Businesses it has served, 5 points will be awarded.

(2) If the Applicant provides evidence that it has received one or more awards within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, up to a maximum of 5 points will be awarded as follows:

(i) International/national—3 points for each.

(ii) Regional/state—2 points for each.

(iii) Local—1 point for each.

(e) *Marketing and outreach plan.* If the scope of work included in the application provides a satisfactory discussion of each of the following criteria, one point for each (a maximum of 5 points) can be awarded.

(1) The goals of the project;

(2) Identified need;

(3) Targeted ultimate recipients;

(4) Timeline and action plan; and

(5) Marketing and outreach strategies and supporting data for strategies.

(f) *Commitment of Matching Funds for the Total Project Cost.* In order to receive points under this criterion, written documentation from each source providing Matching Funds is required when the application is submitted. A maximum of 20 points can be awarded.

(1) If the Applicant proposes to match 50 percent or more of the grant funds requested, 20 points will be awarded.

(2) If the Applicant proposes to match 20 percent or more but less than 50 percent of the grant funds requested, 15 points will be awarded.

(3) If the Applicant proposes to match 5 percent or more but less than 20 percent of the grant funds requested, 10 points will be awarded.

(4) If the Applicant proposes to match less than 5 percent of the grant funds requested, no points will be awarded.

§ 4280.193 Selecting EA and REDA grant applications for award.

(a) *Application competition.* Complete EA and REDA applications received by the Agency by 4:30 p.m. local time on January 31 will be competed against each other. If January 31 falls on a weekend or a Federally-observed holiday, the next Federal business day will be considered the last day for receipt of a Complete Application. Unless otherwise specified in a **Federal Register** notice, the two highest scoring applications from each State, based on the scoring criteria established under § 4280.192, will compete for funding.

(b) *Ranking of applications.* All applications submitted to the National Office under paragraph (a) of this section will be ranked in priority score order. All applications that are ranked will be considered for selection for funding.

(c) *Selection of applications for funding.* Using the ranking created under paragraph (a) of this section, the Agency will consider the score an application has received compared to the scores of other ranked applications, with higher scoring applications receiving first consideration for funding. If two or more applications score the same and if remaining funds are insufficient to fund each such application, the Agency will distribute the remaining funds to each such application on a pro-rata basis. At its discretion, the Agency may also elect to allow any remaining multi-year funds to be carried over to the next fiscal year rather than funding on a pro-rata basis.

(d) *Disposition of ranked applications not funded.* Based on the availability of funding, a ranked application submitted for EA and/or REDA funds may not be funded. Such ranked applications will not be carried forward into the next Federal Fiscal Year's competition.

§ 4280.194 [Reserved]

§ 4280.195 Awarding and administering EA and REDA grants.

The Agency will award and administer EA and REDA grants in accordance with Departmental Regulations and with the procedures and requirements specified in § 4280.122, except as specified in paragraphs (a) through (c) of this section.

(a) Instead of complying with § 4280.122(b), the grantee must provide satisfactory evidence to the Agency that all officers of grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the grantee.

(b) Form RD 400–1 specified in § 4280.122(c)(6) is not required.

(c) The Power Purchase Agreement specified in § 4280.122(h) is not required.

§ 4280.196 Servicing EA and REDA grants.

The Agency will service EA and REDA grants in accordance with the requirements specified in Departmental Regulations, the Grant Agreement, 7 CFR part 1951, subparts E and O, and the requirements in § 4280.123, except as specified in paragraphs (a) through (d) of this section.

(a) *Grant disbursement.* The Agency will determine, based on the applicable Departmental Regulations, whether disbursement of a grant will be by advance or reimbursement. Form SF–270 must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

(b) *Semiannual performance reports.* Project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period (e.g., the number of Energy Audits performed, number of recipients assisted and the type of assistance provided for Renewable Energy Development Assistance);

(2) A list of recipients, each recipient's location, and each recipient's NAICS code;

(3) Problems, delays, or adverse conditions, if any, that have in the past or will in the future affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(4) Objectives and timetable established for the next reporting period.

(c) *Final performance report.* A final performance report will be required with the final Federal financial report within 90 days after project completion. The final performance report must contain the information specified in paragraphs (c)(2)(i) or (c)(2)(ii), as applicable, of this section.

(1) For EA projects, the final performance report must provide complete information regarding:

(i) The number of audits conducted,

(ii) A list of recipients (Agricultural Producers and Rural Small Businesses) with each recipient's NAICS code,

(iii) The location of each recipient,

(iv) The cost of each audit and documentation showing that the recipient of the Energy Audit provided 25 percent of the cost of the audit, and

(v) The expected energy saved for each audit conducted if the audit is implemented.

(2) For REDA projects, the final performance report must provide complete information regarding:

(i) The number of recipients assisted and the type of assistance provided,

(ii) A list of recipients with each recipient's NAICS code,

(iii) The location of each recipient, and

(iv) The expected Renewable Energy that would be generated if the projects were implemented.

(d) *Outcome project performance report.* One year after submittal of the final performance report, the grantee will provide the Agency a final status report on the number of projects that are proceeding with the grantee's recommendations, including the

amount of energy saved and the amount of Renewable Energy generated, as applicable.

§§ 4280.197–4280.200. [Reserved]

Appendix A to Part 4280—Technical Report for Energy Efficiency Improvement Projects

For all Energy Efficiency Improvement (EEI) projects with Total Project Costs of more than $80,000, provide the information specified in Sections A and D and in Section B or Section C, as applicable. If the application is for an EEI project with Total Project Costs of $80,000 or less, please see § 4280.119(b)(3) for the technical report information to be submitted with your application.

If the application is for an EEI project with Total Project Costs of more than $200,000, you must conduct an Energy Audit. However, if the application is for an EEI project with a Total Project Costs of $200,000 or less, you may conduct either an Energy Assessment or an Energy Audit.

Section A—Project information. Describe how all the improvements to or replacement of an existing building and/or equipment meet the requirements of being Commercially Available. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the Energy Efficiency Improvement(s) is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section B—Energy Audit. If conducting an Energy Audit, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 36 months or, if in operation less than 36 months, the length of ownership for the building and equipment being audited. Any energy conversion should be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency, including a discussion of reliability and durability of the improvements.

(i) Provide preliminary specifications for critical components.

(ii) Provide preliminary drawings of project layout, including any related structural changes.

(iii) Identify significant changes in future related operations and maintenance costs.

(iv) Describe explicitly how outcomes will be measured.

(3) *Technical analysis.* Give consideration to the interactions among the potential improvements and the current energy system(s).

(i) For the most recent 36 months, or the length of ownership if in operation for less than 36 months, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project was in operation for this same time period.

(ii) Calculate all direct and attendant indirect costs of each improvement; and

(iii) Rank potential improvements measures by cost-effectiveness.

(4) *Qualifications of the auditor.* Provide the qualifications of the individual or entity which completed the audit.

Section C—Energy Assessment. If conducting an Energy Assessment, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 36 months or, if in operation less than 36 months, the length of ownership for the building and equipment being evaluated. Any energy conversion shall be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency.

(3) *Technical analysis.* Giving consideration to the interactions among the potential improvements and the current energy system(s), provide the information specified in paragraphs (3)(i) through (3)(iii) of this section.

(i) For the most recent 36 months, or the length of ownership if in operation for less than 36 months, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project was in operation for this same time period.

(ii) Document baseline data compared to projected consumption, together with any explanatory notes on source of the projected consumption data. When appropriate, show before-and-after data in terms of consumption per unit of production, time, or area.

(iii) Estimate Simple Payback.

(4) *Qualifications of the assessor.* Provide the qualifications of the individual or entity which completed the assessment.

Section D—Qualifications. Provide a resume or other evidence of the contractor or installer's qualifications and experience with the proposed energy efficiency improvement technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are qualified installer/contractor.

Appendix B to Part 4280—Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of $200,000 or Less

Provide the information specified in Sections A through D for each technical report prepared under this appendix. A Renewable Energy Site Assessment may be used in lieu of Sections A through C if the Renewable Energy Site Assessment contains the information requested in Sections A through C. In such instances, the technical report would consist of Section D and the Renewable Energy Site Assessment.

Note: If the Total Project Cost for the RES project is $80,000 or less, this appendix does not apply. Instead, for such projects, please provide the information specified in § 4280.119(b)(4).

Section A—Project description. Provide a description of the project, including descriptions of the project site and its location and the quality and availability of the Renewable Energy resource. Describe how all the major equipment and construction meet the requirements of being Commercially Available. Identify the amount of Renewable Energy generated through the deployment of the proposed system. If applicable, also identify the percentage of energy being replaced by the system.

If the application is for a Bioenergy Project, provide documentation that demonstrates that any and all woody biomass feedstock from National forest system land or public lands cannot be used as a higher value wood-based product.

If the application is for the installation of equipment and tanks directly associated with Flexible Fuel Pumps, provide documentation that demonstrates the availability of Blended Liquid Transportation Fuel and the demand for that fuel in its service area.

Section B—Project economic assessment. Describe the projected financial performance of the proposed project. The description must address Total Project Costs, energy savings, and revenues, including applicable investment and other production incentives accruing from government entities. Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, byproducts, and green tags. Information must be provided to allow the calculation of Simple Payback.

Section C—Project construction and equipment information. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the Renewable Energy System is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding

component warranties and the availability of spare parts.

Section D—Qualifications of key service providers. Describe the key service providers, including the number of similar systems installed and/or manufactured, professional credentials, licenses, and relevant experience. When specific numbers are not available for similar systems, estimations will be acceptable.

Appendix C to Part 4280—Technical Reports for Renewable Energy System Projects With Total Project Costs of Greater than $200,000

Provide the information specified in Sections A through G for each technical report prepared under this appendix. Provide the resource assessment under Section C that is applicable to the project.

Section A—Qualifications of the project team. Describe the project team, their professional credentials, and relevant experience. The description shall support that the project team key service providers have the necessary professional credentials, licenses, certifications, and relevant experience to develop the proposed project.

Section B—Agreements and permits. Describe the necessary agreements and permits (including any for local zoning requirements) required for the project and the anticipated schedule for securing those agreements and permits. For example, Interconnection Agreements and Power Purchase Agreements are necessary for all renewable energy projects electrically interconnected to the utility grid.

Section C—Resource assessment. Describe the quality and availability of the renewable resource and the amount of Renewable Energy generated through the deployment of the proposed system. For all Bioenergy Projects, except Anaerobic Digesters, complete Section C.3. For Anaerobic Digester projects, complete Section C.7.

1. *Wind.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

2. *Solar.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

3. *Bioenergy Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the Renewable Biomass resource, including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource. Document that any and all woody biomass feedstock from National forest system land or public lands cannot be used as a higher value wood-based product.

4. *Flexible Fuel Pumps.* Applications for the installation of equipment and tanks directly associated with Flexible Fuel Pumps must document availability of Blended Liquid Transportation Fuel and the demand for that fuel in its service area.

5. *Geothermal Electric Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

6. *Geothermal Direct Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

7. *Anaerobic digester.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates used as digester inputs, including animal wastes or other Renewable Biomass in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Provide either tabular values or laboratory analysis of representative samples that include biodegradability studies to produce gas production estimates for the project on daily, monthly, and seasonal basis.

8. *Hydrogen Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the Renewable Biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

9. *Hydroelectric/Ocean Energy projects.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a Qualified Consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

Section D—Design and engineering. Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description shall support that the system will be designed, engineered, tested, and monitored so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, identify that all major equipment is Commercially Available, including proprietary equipment, and justify how this unique equipment is needed to meet the requirements of the proposed design. In addition, information regarding component warranties and the availability of spare parts must be presented.

Section E—Project development. Describe the overall project development method, including the key project development activities and the proposed schedule, including proposed dates for each activity. The description shall identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description shall address Applicant project development cash flow requirements. Details for equipment procurement and installation shall be addressed in Section F of this Appendix.

Section F—Equipment procurement and installation. Describe the availability of the equipment required by the system. The description shall support that the required equipment is available and can be procured and delivered within the proposed project development schedule. Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement shall be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

Section G—Operations and maintenance. Describe the operations and maintenance requirements of the system, including major rebuilds and component replacements necessary for the system to operate as designed over its useful life. The warranty shall cover and provide protection against both breakdown and a degradation of performance. The performance of the renewable energy system or energy efficiency improvement shall be monitored and recorded as appropriate to the specific technology.

Appendix D to Part 4280—Feasibility Study Content

Elements in an acceptable Feasibility Study include, but are not necessarily limited to, the elements specified in Sections A through G, as applicable, of this appendix.

Section A. Executive Summary. Provide an introduction and overview of the project. In the overview, describe the nature and scope of the proposed project, including purpose, project location, design features, Capacity, and estimated total capital cost. Include a summary of each of the elements of the Feasibility Study, including:

(1) Economic feasibility determinations;
(2) Market feasibility determinations;
(3) Technical feasibility determinations;
(4) Financial Feasibility determinations;
(5) Management feasibility determinations; and
(6) Recommendations for implementation of the proposed project.

Section B. Economic Feasibility. Provide information regarding the project site; the availability of trained or trainable labor; and the availability of infrastructure, including utilities, and rail, air and road service to the site. Discuss feedstock source management, including feedstock collection, pre-treatment, transportation, and storage, and provide estimates of feedstock volumes and costs. Discuss the proposed project's potential impacts on existing manufacturing plants or other facilities that use similar feedstock if the proposed technology is adopted. Provide projected impacts of the proposed project on resource conservation, public health, and the environment. Provide an overall economic impact of the proposed project including any additional markets created (e.g., for agricultural and forestry products and agricultural waste material) and potential for rural economic development. Provide the proposed project's plans for working with producer associations or cooperatives including estimated amount of annual feedstock and biofuel and byproduct dollars from producer associations and cooperatives.

Section C. Market Feasibility. Provide information on the sales organization and management. Discuss the nature and extent of market and market area and provide marketing plans for sale of projected output, including both the principal products and the by-products. Discuss the extent of competition including other similar facilities in the market area. Provide projected total supply of and projected competitive demand for raw materials. Describe the procurement plan, including projected procurement costs and the form of commitment of raw materials (e.g., marketing agreements, etc.). Identify commitments from customers or brokers for both the principal products and the by-products. Discuss all risks related to the industry, including industry status.

Section D. Technical Feasibility. The technical feasibility report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income or production that are projected in the financial statements. If no other individual or firm with the expertise necessary to make such a determination is reasonably available to perform the function, an individual or firm that is not independent may be used.

(1) Identify any constraints or limitations in the financial projections and any other project or design-related factors that might affect the success of the enterprise. Identify and estimate project operation and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based.

(2) Discuss all risks related to construction of the project and regulatory and governmental action as they affect the technical feasibility of the project.

Section E. Financial Feasibility. Discuss the reliability of the financial projections and assumptions on which the financial statements are based including all sources of project capital both private and public, such as Federal funds. Provide 3 years (minimum) projected Balance Sheets, Income Statements, and cash flow projections for the life of the project. Discuss the ability of the business to achieve the projected income and cash flow. Provide an assessment of the cost accounting system. Discuss the availability of short-term credit or other means to meet seasonable business costs and the adequacy of raw materials and supplies. Provide a sensitivity analysis, including feedstock and energy costs. Discuss all risks related to the project, financing plan, the operational units, and tax issues.

Section F. Management Feasibility. Discuss the continuity and adequacy of management. Identify Applicant and/or management's previous experience concerning the receipt of Federal financial assistance, including amount of funding, date received, purpose, and outcome. Discuss all risks related to the Applicant as a company (e.g., Applicant is at the development stage) and conflicts of interest, including appearances of conflicts of interest.

Section G. Qualifications. Provide a resume or statement of qualifications of the author of the Feasibility Study, including prior experience.

Dated: March 21, 2013.

Doug O'Brien,

Deputy Under Secretary, Rural Development.

[FR Doc. 2013–07273 Filed 4–11–13; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Replacement of the Elliott Bay Seawall in Seattle, Washington; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 130325286–3286–01]

RIN 0648–BC69

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Replacement of the Elliott Bay Seawall in Seattle, Washington

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the Seattle Department of Transportation (SDOT), on behalf of the City of Seattle (City), for authorization to take marine mammals incidental to construction associated with the replacement of the Elliott Bay Seawall in Seattle, Washington, for the period September 2013 to September 2018. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requests information, suggestions, and comments on these proposed regulations.

DATES: Comments and information must be received no later than May 13, 2013.

ADDRESSES: You may submit comments on this document, identified by 0648–BC69, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the Submit a Comment icon, then enter 0648–BC69 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the Submit a Comment icon on the right of that line.

• Hand delivery or mailing of comments via paper or disc should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding any aspect of the collection of information requirement contained in this proposed rule should be sent to NMFS via one of the means provided here and to the Office of Information and Regulatory Affairs, NEOB–10202, Office of Management and Budget, Attn: Desk Office, Washington, DC 20503, *OIRA@omb.eop.gov.*

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of SDOT's application, and other supplemental documents, may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined 'negligible impact' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines 'harassment' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].''

Summary of Request

On September 17, 2012, NMFS received a complete application from SDOT requesting authorization for the take of nine marine mammal species incidental to replacement of the Elliott Bay Seawall in Seattle, Washington, over the course of 5 years. The purpose of the proposed project is to reduce the risks of coastal storm and seismic damage and to protect public safety, critical infrastructure, and associated economic activities in the area. Additionally, the project would improve the degraded ecosystem functions and processes of the Elliott Bay nearshore around the existing seawall. Noise produced during pile installation and removal activities has the potential to take marine mammals. SDOT requested, and NMFS is proposing, authorization to take nine marine mammal species by Level B harassment only: Pacific harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), southern resident and transient killer whales (*Orcinus orca*), humpback whale (*Megaptera novaengliae*), and gray whale (*Eschrichtius jubatus*). Injury or mortality is unlikely during the proposed project, and take by Level A harassment (including injury) or mortality is not requested nor proposed for authorization.

Description of the Specified Activity

SDOT proposes to replace the Elliott Bay Seawall from South Washington Street to Broad Street, along the Seattle waterfront abutting Elliott Bay in King County, Washington. The purpose of the project is to reduce the risks of coastal storm and seismic damages and to

protect public safety, critical infrastructure, and associated economic activities along Seattle's central waterfront. Additionally, the project would improve nearshore ecosystem functions and processes in the vicinity of the existing seawall. The proposed project would be constructed in two phases: Phase 1 would extend for about 3,600 linear feet (ft) (1 kilometer (km)) from South Washington Street to Virginia Street, and Phase 2 would extend for about 3,500 linear ft (1 km) from Virginia to Broad Streets.

The new seawall would be constructed landward of the existing seawall face and result in a net setback of the wall from its existing location. The majority of seawall construction would occur behind a temporary steel sheet pile containment wall that would be placed waterward of the existing seawall complex and extend the full length of the construction work area during each construction season. The seawall structure would consist of a soil improvement structure that would stabilize the soils behind the existing seawall and may include anchors or tie-backs that extend down to non-liquefiable soil for seismic stability. A four-lane primary arterial that runs along the entire length of the seawall would need to be relocated during seawall construction. A stormwater treatment system would be installed to treat stormwater runoff from the project area using basic treatment technology to meet City code. Public amenities resulting from the project would include replaced railings, restoration of the Washington Street boat landing, riparian planters, street plantings, and reconstructed sidewalks.

Construction activities that may result in the take of marine mammals include in-water vibratory and impact pile installation and removal. An APE 200 or equivalent-type of vibratory hammer would be used, with no more than an APE 400 model required for a worst-case scenario. A Delmag D46–32 or equivalent-type of impact hammer would be used, with no more than a Delmag D62–22 required for a worst-case scenario. A total of 1,930 piles would be installed over a 5-year period, and 1,740 of those piles would also be removed (leaving 190 permanent piles). In addition, 80 existing piles would be removed over a 5-year period. All proposed in-water pile installation and removal is summarized in Tables 1 through 3 below. To account for potential mid-project changes in pile numbers, SDOT included a 10 percent contingency in their estimates for installation and removal. These contingency numbers are used in all calculations and assessments in this document. Roughly the same number and distribution of in-water steel sheet piles and permanent piles is expected for each year of the project. Piles installed in upland areas are not expected to result in the take of marine mammals because sound levels would not reach NMFS threshold criteria underwater and there are no pinniped haul-outs in the immediate area. Upland pile installation is not mentioned further.

Prior to excavation and demolition of the existing seawall, a temporary containment wall constructed of steel sheet piles would be installed in each construction segment (Table 1). The temporary containment wall would be installed by vibratory driving and would be located in the water about 5 ft (1.5 m) waterward of the existing seawall. It would remain in place throughout the duration of construction. After construction, the temporary containment wall would be removed with vibratory equipment. In the rare case where steel sheet piles would be load bearing, an impact hammer may be required to ''proof'' or set the piles. The temporary containment wall would serve to prevent adverse effects on nearshore marine habitat from the release of turbidity and contaminants associated with seawall excavation and demolition.

TABLE 1—TEMPORARY CONTAINMENT WALL INSTALLATION AND REMOVAL

[Steel sheet piles only]

Construction phase	Pile pairs [1] (10% contingency included)	Maximum duration (days)	Maximum hours per day	Installation/ removal method
Installation				
Phase 1 (Years 1–3)	1,023	60	12	vibratory.
Estimated number of piles that would require proofing [2]	205	[3] 4	10	impact.
Phase II (Years 4–5)	717	40	12	vibratory.
Estimated number of piles that would require proofing [2]	143	[3] 4	10	impact.
Removal				
Phase I	1,023	25	12	vibratory.
Phase II	717	15	12	vibratory.
Total Installed/Removed	1,740			

[1] Steel sheet pile pairs only (48 inches wide).
[2] Number equals 20 percent of estimated number of piles installed per phase.
[3] Total estimated installation time is 8 hours of actual impact driving.
[4] Total estimated installation time is 12 hours of actual impact driving.

Existing creosote-treated timber piles and concrete piles located waterward of the existing seawall face that would interfere with construction would be removed using a vibratory extraction method (Table 2). Timber pilings that break during extraction would be cut off 2 ft (0.6 m) below the mudline.

TABLE 2—EXISTING PILE REMOVAL

[Timber and concrete piles only]

Construction phase	Piles [1]	Pile type	Justification for removal	Maximum duration (days)	Maximum hours per day	Removal method
Phase 1 (Excluding Washington Street Boat Landing).	20	Creosote-treated timber[2].	Currently not used; from previous uses along wall.	2	12	vibratory.
Phase I (Washington Street Boat Landing Only).	8	Creosote-treated timber[2].	Support existing pier structure.	1	12	vibratory.
Phase II	49	Creosote-treated timber[2].	Currently not used; from previous uses along wall.	2	12	vibratory.
Phase II	3	Concrete[3]	Currently not used; from previous uses along wall.	1	12	vibratory.
Total Removed	80			6		

[1] Number includes 10 percent contingency.
[2] Assumed to be 14-in diameter.
[3] Assumed to be 18-in diameter.

About 190 permanent concrete piles would be installed on either side of the temporary sheet pile containment wall using impact pile installation (Table 3). All in-water permanent piles are assumed to be 16.5-in-diameter (42-cm) precast concrete octagonal piles. The temporary sheet pile containment wall may serve as an attenuation device during impact pile installation to reduce sound levels by up to 10 decibels (dB). The concrete pilings installed landward of the temporary containment wall are intended to provide permanent structural support for cantilevered sidewalks and pier areas with high vehicle traffic. The remaining pilings installed waterward of the temporary containment wall would support the replacement of the Washington Street Boat Landing.

TABLE 3—PERMANENT PILE INSTALLATION

[16.5-in-diameter (42-cm) precast concrete octagonal piles only]

Construction phase	Piles	Justification for installation	Maximum duration (days)	Maximum hours per day	Installation method
Phase I (Excluding Washington Street Boat Landing).	92	To support sidewalk, viewing areas, and vehicular traffic access.	11	10	Impact.
Phase I (Washington Street Boat Landing Only).	15	To support new pier structure	2	10	Impact.
Phase II	83	To support sidewalk and viewing areas.	10	10	Impact.
Total Installed	190		23		

Dates and Duration of Specified Activity

Seawall construction is expected to occur in two phases: Phase 1, which includes the area of the Central Seawall, and Phase 2, which includes the area of the North Seawall (Table 4). Phase 1 includes three construction segments, and Phase 2 includes two construction segments; each segment represents 1 to 2 years of construction. Construction is scheduled to begin with Phase I work in fall 2013. The three segments of Phase 1 would be constructed over three construction seasons with two summer shutdown periods from Memorial Day weekend through Labor Day weekend to accommodate the primary tourist and business season. Phase 2 construction is expected to begin following completion of Phase 1 and would occur over two 2-year construction seasons with a summer shutdown period each year. SDOT's Letter of Authorization (LOA) request covers the construction period from 2013 to 2018, from the start of Phase 1, Segment 1 to the end of Phase 2, Segment 1. A request for another MMPA authorization may be submitted for any further construction.

TABLE 4—PROPOSED PROJECT CONSTRUCTION SCHEDULE

Phase	Segment	Duration
1 (Central Seawall)	I	Year 1 (Fall 2013–Spring 2014).
	II	Year 2 (Fall 2014–Spring 2015).
	III	Year 3 (Fall 2015–Spring 2016).
2 (North Seawall)	I	Years 4 and 5 (Fall 2016–Spring 2018).
	II	Years 6 and 7 (Fall 2018–Spring 2020).*

***Note:** Years 6 and 7 would not be covered under this LOA request because the MMPA limits incidental take authorizations to 5-year periods.

Specified Geographical Region

The Elliott Bay Seawall runs along the downtown Seattle waterfront in King County, Washington. SDOT's proposed project would occur between South Washington Street and Broad Street, which abut Elliott Bay, a 21-square kilometer (km^2) urban embayment in central Puget Sound. The inner bay receives fresh water from the Duwamish River and most of the stormwater runoff from 67 km^2 of highly developed land in metropolitan Seattle. This is an important industrial region and home to the Port of Seattle, which ranked as the nation's sixth busiest U.S. seaport in 2010.

The region of the specified activity (or ''area of potential effects,'' as described in SDOT's application) is the area in which elevated sound levels from pile-related activities could result in the take of marine mammals. This area includes the proposed construction zone, Elliott Bay, and a portion of Puget Sound. The construction zone extends for about 7,100 linear ft (2,165 m) along the Seattle shoreline and is mostly concentrated in upland areas. The area of in-water pile installation and removal activities would be restricted to the length of the seawall and waterward to within 15 ft (4.6 m) of the seawall face, and to depths less than 30 feet (9.1 m). SDOT calculated unattenuated and unobstructed vibratory pile installation (or removal) to propagate up to 2.5 miles (4 km) from the sound source with high enough sound levels to meet NMFS' acoustic threshold criteria for marine mammal harassment (see Sound Thresholds section below). SDOT expects that pile-related construction noise could extend throughout the nearshore and open water environments to just west of Alki Point and a limited distance into the East Waterway of the Lower Duwamish River (a highly industrialized waterway).

Brief Background on Sound

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. A summary is included below.

Sound is a wave of pressure variations propagating through a medium (e.g., water). Pressure variations are created by compressing and relaxing the medium. Sound measurements can be expressed in two forms: intensity and pressure. Acoustic intensity is the average rate of energy transmitted through a unit area in a specified direction and is expressed in watts per square meter (W/m^2). Acoustic intensity is rarely measured directly, but rather from ratios of pressures; the standard reference pressure for underwater sound is 1 microPascal (μPa); for airborne sound, the standard reference pressure is 20 μPa (Richardson *et al.,* 1995).

Acousticians have adopted a logarithmic scale for sound intensities, which is denoted in decibels (dB). Decibel measurements represent the ratio between a measured pressure value and a reference pressure value (in this case 1 μPa or, for airborne sound, 20 μPa). The logarithmic nature of the scale means that each 10-dB increase is a ten-fold increase in acoustic power (and a 20-dB increase is then a 100-fold increase in power; and a 30-dB increase is a 1,000-fold increase in power). A ten-fold increase in acoustic power does not mean that the sound is perceived as being ten times louder, however. Humans perceive a 10-dB increase in sound level as a doubling of loudness, and a 10-dB decrease in sound level as a halving of loudness. The term ''sound pressure level'' implies a decibel measure and a reference pressure that is used as the denominator of the ratio. Throughout this document, NMFS uses 1 microPascal (denoted re: 1μPa) as a standard reference pressure unless noted otherwise.

It is important to note that decibel values underwater and decibel values in air are not the same (different reference pressures and densities/sound speeds between media) and should not be directly compared. Because of the different densities of air and water and the different decibel standards (i.e., reference pressures) in air and water, a sound with the same level in air and in water would be approximately 62 dB lower in air. Thus, a sound that measures 160 dB (re 1 μPa) underwater would have the same approximate effective level as a sound that is 98 dB (re 20 μPa) in air.

Sound frequency is measured in cycles per second, or Hertz (abbreviated Hz), and is analogous to musical pitch; high-pitched sounds contain high frequencies and low-pitched sounds contain low frequencies. Natural sounds in the ocean span a huge range of frequencies: from earthquake noise at 5 Hz to harbor porpoise clicks at 150,000 Hz (150 kHz). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic (typically below 20 Hz) and ultrasonic (typically above 20,000 Hz) sounds, respectively. A single sound may be made up of many different frequencies together. Sounds made up of only a small range of frequencies are called ''narrowband'', and sounds with a broad range of frequencies are called ''broadband''; explosives are an example of a broadband sound source and active tactical sonars are an example of a narrowband sound source.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using behavioral protocols or auditory evoked potential (AEP) techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. Further, the frequency range in which each group's hearing is estimated as being most sensitive is represented in the flat part of the M-weighting functions (which are derived from the audiograms described above; see Figure 1 in Southall *et al.,* 2007) developed for each broad group. The functional groups and the associated frequencies are indicated below (though, again, animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low-frequency cetaceans—functional hearing is estimated to occur between approximately 7 Hz and 30 kHz;
- Mid-frequency cetaceans—functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans—functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- Pinnipeds in water—functional hearing is estimated to occur between approximately 75 Hz and 75 kHz.

The estimated hearing range for low-frequency cetaceans has been extended slightly from previous analyses (from 22 to 30 kHz). This decision is based on data from Watkins *et al.* (1986) for numerous mysticete species, Au *et al.* (2006) for humpback whales, an abstract from Frankel (2005) and paper from Lucifredi and Stein (2007) on gray whales, and an unpublished report (Ketten and Mountain, 2009) and abstract (Tubelli *et al.,* 2012) for minke whales. As more data from more species and/or individuals become available, these estimated hearing ranges may require modification.

When sound travels (propagates) from its source, its loudness decreases as the distance traveled by the sound

increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound a kilometer away. Acousticians often refer to the loudness of a sound at its source (typically referenced to one meter from the source) as the source level and the loudness of sound elsewhere as the received level (i.e., typically the receiver). For example, a humpback whale 3 km from a device that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound travels through water (e.g., spherical spreading [3 dB reduction with doubling of distance] was used in this example). As a result, it is important to understand the difference between source levels and received levels when discussing the loudness of sound in the ocean or its impacts on the marine environment.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual active sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

Metrics Used in This Document

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used to describe sound levels in the discussions of acoustic effects in this document.

Sound pressure level (SPL)—Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one square meter. SPL is expressed as the ratio of a measured sound pressure and a reference level.

SPL (in dB) = 20 log (pressure/reference pressure)

The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa. SPL is an instantaneous pressure measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square pressure, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square. SPL does not take the duration of exposure into account.

Sound exposure level (SEL)—SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 μPa^2-s. Below is a simplified formula for SEL.

SEL = SPL + 10log(duration in seconds)

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Sound generated by impact pile driving is highly variable, based on site-specific conditions such as substrate, water depth, and current. Sound levels may also vary based on the size of the pile, the type of pile, and the energy of the hammer.

Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce much less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Caltrans, 2009). Rise time is slower, reducing the probability and severity of injury (USFWS, 2009), and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2001). However, vibratory hammers cannot be used in all circumstances. In some substrates, the capacity of a vibratory hammer may be insufficient to drive the pile to load-bearing capacity or depth (Caltrans, 2009). Additionally, some vibrated piles must be 'proofed' (i.e., struck with an impact hammer) for several seconds to several minutes in order to verify the load-bearing capacity of the pile (WSDOT, 2008).

Impact and vibratory pile driving are the primary in-water construction activities associated with the project. The sounds produced by these activities fall into one of two sound types: pulsed and non-pulsed (defined in next paragraph). Impact pile driving produces pulsed sounds, while vibratory pile driving produces non-pulsed sounds. The distinction between these two general sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (e.g., Ward, 1997 in Southall *et al.,* 2007). Southall *et al.* (2007) provides an in-depth discussion of these concepts and a summary is provided here.

Pulsed sounds (e.g., explosions, gunshots, sonic booms, seismic pile driving pulses, and impact pile driving) are brief, broadband, atonal transients (ANSI, 1986; Harris, 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a decay period that may include a period of diminishing, oscillating maximal and minimal pressures. Pulsed sounds generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds (which may be intermittent or continuous) can be tonal, broadband, or both. Some of these non-pulse sounds can be transient signals of short duration but without the essential properties of pulses (e.g., rapid rise time). Examples of non-pulse sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Sound Thresholds

Since 1997, NMFS has used generic sound exposure thresholds to determine when an activity in the ocean that produces sound might result in impacts to a marine mammal such that a take by harassment or injury might occur (NMFS, 2005b). To date, no studies have been conducted that examine impacts to marine mammals from pile driving sounds from which empirical sound thresholds have been established. Current NMFS practice regarding exposure of marine mammals to high levels of sound is that cetaceans and pinnipeds exposed to impulsive sounds of 180 and 190 dB rms or above, respectively, are considered to have been taken by Level A (i.e., injurious) harassment. Behavioral harassment

(Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (e.g., impact pile driving) and 120 dB rms for non-pulsed sound (e.g., vibratory pile driving), but below injurious thresholds. However, due to ongoing anthropogenic noise around Elliott Bay, the ambient sound level is higher than 120 dB in this region. Based on underwater sound measurements performed by the Washington State Department of Transportation in 2011, and following NMFS Northwest Region and Northwest Fisheries Science Center's ''Guidance Document: Data Collection Methods to Characterize Underwater Background Sound Relevant to Marine Mammals in Coastal Nearshore Waters and Rivers of Washington and Oregon,'' we assume that the ambient sound level around the proposed project area is 123 dB (Laughlin, 2011). Therefore, 123 dB rms is used to estimate Level B harassment for non-pulsed sound (e.g., vibratory pile driving) in this instance. For airborne sound, pinniped disturbance from haul-outs has been documented at 100 dB (unweighted) for pinnipeds in general, and at 90 dB (unweighted) for harbor seals. NMFS uses these levels as guidelines to estimate when harassment may occur.

Distance to Sound Thresholds

The extent of project-generated sound both in and over water was calculated for the locations where pile driving would occur in Elliott Bay. In the absence of site-specific data, the practical spreading loss model was used for determining the extent of sound from a source (Davidson, 2004; Thomsen *et al.,* 2006). The model assumes a logarithmic coefficient of 15, which equates to sound energy decreasing by 4.5 dB with each doubling of distance from the source. To calculate the loss of sound energy from one distance to another, the following formula is used:

$$\text{Transmission Loss (dB)} = 15 \log(D_1/D_0)$$

D_1 is the distance from the source for which SPLs need to be known, and D_0 is the distance from the source for which SPLs are known (typically 10 m from the pile). This model also solves for the distance at which sound attenuates to various decibel levels (e.g., a threshold or background level). The following equation solves for distance:

$$D_1 = D_0 \times 10^{(TL/15)}$$

where TL stands for transmission loss (the difference in decibel levels between D_0 and D_1). For example, using the distance to an injury threshold (D_1), the area of effect is calculated as the area of a circle, πr^2, where r (radius) is the distance to the threshold or background. If a landform or other shadowing element interrupts the spread of sound within the threshold distance, then the area of effect truncates at the location of the shadowing element.

Sound levels are highly dependent on environmental site conditions. Therefore, published hydroacoustic monitoring data for projects with similar site conditions as the Elliott Bay Seawall project were considered (Caltrans, 2009 and WSDOT, 2011a). Based on these data and the noise attenuation practical spreading model, also used for pile driving activities done by the Washington State Department of Transportation and the Washington State Ferries, the sound attenuation distances summarized in Table 5 have been identified for in-water pile installation. Distance thresholds that account for each pile-related activity and pile type proposed for the Elliott Bay Seawall project are presented in Table 6.

TABLE 5—SUMMARY OF NEAR-SOURCE (10-M) UNATTENUATED SOUND PRESSURES FOR IN-WATER PILE INSTALLATION USING AN IMPACT HAMMER AND VIBRATORY DRIVER/EXTRACTOR

Pile type and approximate size	Method	Relative water depth (m)	Average sound pressure measured in dB	
			Peak	RMS
Creosote-treated 14-inch-diameter timber pile	Vibratory removal	15	164	150
16.5-inch-diameter precast concrete octagonal pile.	Impact	15	188	176
Steel sheet pile pair; 48-inches in length per pair.	Vibratory (installation and removal)	15	182	165
Steel sheet pile pair; 48-inches in length per pair.	Impact (installation proofing)	15	205	190

TABLE 6—CALCULATED DISTANCES TO THRESHOLD VALUES FOR PILE-RELATED ACTIVITIES

Harassment threshold	Distance to harassment for pinnipeds	Distance to harassment for cetaceans
24-inch Steel Sheet Pile (vibratory)		
Level A (180 and 190 dB)	0.2 m (0.7 ft)	1 m (3.3 ft).
Level B (123 dB)	6,276 m (3.9 mi)	6,276 m (3.9 mi).
24-inch Steel Sheet Pile (impact, unattenuated)		
Level A (180 and 190 dB)	10 m (33 ft)	46 m (152 ft).
Level B (160 dB)	1,000 m (3,280 ft)	1,000 m (3,280 ft).
24-inch Concrete Pile (impact, unattenuated)		
Level A (180 and 190 dB)	1 m (3.3 ft)	5 m (18 ft).
Level B (160 dB)	117 m (383 ft)	117 m (383 ft).

TABLE 6—CALCULATED DISTANCES TO THRESHOLD VALUES FOR PILE-RELATED ACTIVITIES—Continued

Harassment threshold	Distance to harassment for pinnipeds	Distance to harassment for cetaceans
24-inch Concrete Pile (impact, unattenuated)		
Level A (180 and 190 dB)	0.5 m (1.8 ft)	2.5 m (8.2 ft).
Level B (160 dB)	54 m (177 ft)	54 m (177 ft).

Most distances to Level A thresholds (for vibratory steel sheet pile and impact concrete pile installations) were calculated to be very close to the sound source. In other words, the only way a marine mammal could be injured by elevated noise levels from pile-related activities would be if the animal was located immediately adjacent to the pile being driven. However, longer distances to Level A thresholds were calculated for impact pile installation for steel sheet piles: 152 ft for cetaceans and 33 ft for pinnipeds. Proposed mitigation and monitoring measures (discussed later in this document) would make the potential for injury unlikely.

Description of Marine Mammals in the Area of the Specified Activity

Nine marine mammal species, including distinct population segments, have the potential to occur in the area of the specified activity (Table 7). All nine species have been observed in Puget Sound at certain periods of the year and are discussed in further detail below.

TABLE 7—MARINE MAMMAL SPECIES OR DISTINCT POPULATION SEGMENTS THAT COULD OCCUR IN THE PROPOSED PROJECT AREA

Common name	Scientific name	ESA status	MMPA status	Abundance	Population status	Likelihood of occurrence	Seasonality
Pinnipeds							
Pacific harbor seal	*Phoca vitulina*			n/a	unknown	Occasional	Year-round
California sea lion	*Zalophus californianus*			296,750		Occasional	August–April.
Steller sea lion	*Eumetopias jubatus*	Threatened	Depleted	58,334–72,223	increasing	Rare	August–April.
Cetaceans							
Harbor porpoise	*Phocoena phocoena*			unknown	unknown	Rare	Year-round.
Dall's porpoise	*Phocoenoides dalli*			42,000	unknown	Rare	Winter–Spring.
Southern resident killer whale DPS.	*Orcinus orca*	Endangered		86	unknown	Occasional	Year-round.
Transient killer whale	*Orcinus orca*			346	unknown	Rare	Year-round.
Humpback whale	*Megaptera novaengliae.*	Endangered	Depleted	2,043	increasing	Rare	February–June.
Gray whale	*Eschrichtius robustus*			18,000	increasing	Rare	January–September.

Harbor Seal

Species Description—Harbor seals, which are members of the Phocid family (true seals), inhabit coastal and estuarine waters and shoreline areas from Baja California, Mexico to western Alaska. For management purposes, differences in mean pupping date (i.e., birthing) (Temte, 1986), movement patterns (Jeffries, 1985; Brown, 1988), pollutant loads (Calambokidis *et al.,* 1985) and fishery interactions have led to the recognition of three separate harbor seal stocks along the west coast of the continental U.S. (Boveng, 1988). The three distinct stocks are: (1) Inland waters of Washington (including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.* 2007b). The seals that could potentially be in the project area are from the inland waters of Washington stock.

The average weight for adult seals is about 180 lb (82 kg) and males are typically slightly larger than females. Male harbor seals weigh up to 245 lb (111 kg) and measure approximately 5 ft (1.5 m) in length. The basic color of harbor seals' coat is gray and mottled but highly variable, from dark with light color rings or spots to light with dark markings (NMFS, 2008c).

Status—In 1999, the mean count of harbor seals occurring in Washington's inland waters was 9,550 animals (Jeffries *et al.,* 2003). Radio-tagging studies conducted at six locations collected information on haulout patterns of harbor seals in 1991 and 1992, resulting in a correction factor of 1.53 to account for animals in the water that are missed during the aerial surveys (Huber *et al.,* 2001). Using this correction factor results in a population estimate of 14,612 for the Washington inland waters stock of harbor seals (Jeffries *et al.,* 2003). Although this abundance estimate represents the best scientific information available, per NMFS stock assessment policy it is not considered current because it is more than 8 years old. Between 1983 and 1996, the annual rate of increase for this stock was 6 percent (Jeffries *et al.,* 1997). The peak count occurred in 1996 and, based on a fitted generalized logistic model, the population is thought to be stable. Because there is no current estimate of minimum abundance, potential biological removal (PBR) cannot be calculated for this stock. Harbor seals are not considered to be depleted under the MMPA or listed as threatened or endangered under ESA.

Behavior and Ecology—Harbor seals are non-migratory with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Scheffer and Slipp, 1944; Fisher, 1952; Bigg, 1969, 1981). They are not known to make extensive pelagic migrations, although some long distance movement of tagged animals in Alaska (174 km), and along the U.S. west coast

(up to 550 km), have been recorded (Pitcher and McAllister, 1981; Brown and Mate, 1983; Herder, 1986). Harbor seals are coastal species, rarely found more than 12 mi (20 km) from shore, and frequently occupy bays, estuaries, and inlets (Baird, 2001). Individual seals have been observed several miles upstream in coastal rivers. Ideal harbor seal habitat includes haul-out sites, shelter during the breeding periods, and sufficient food (Bjorge, 2002).

Harbor seals haul out on rocks, reefs, beaches, and ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals display strong fidelity for haul-out sites (Pitcher and Calkins, 1979; Pitcher and McAllister, 1981), although human disturbance can affect haul-out choice (Harris *et al.,* 2003). Group sizes range from small numbers of animals on intertidal rocks to several thousand animals found seasonally in coastal estuaries. The harbor seal is the most commonly observed and widely distributed pinniped found in Washington (Jeffries *et al.,* 2000; ODFW, 2010). Harbor seals use hundreds of sites to rest or haul out along the coast and inland waters of Washington, including tidal sand bars and mudflats in estuaries, intertidal rocks and reefs, beaches, log booms, docks, and floats in all marine areas of the state.

The harbor seal is the only pinniped species that is found year-round and breeds in Washington waters (Jeffries *et al.,* 2000). Harbor seals mate at sea and females give birth during the spring and summer, although the pupping season varies by latitude. Pupping seasons vary by geographic region with pups born in the San Juan Islands and eastern bays of Puget Sound from June through August. Suckling harbor seal pups spend as much as forty percent of their time in the water (Bowen *et al.,* 1999).

Individuals occur along the Elliott Bay shoreline (WSDOT, 2004). There is one documented harbor seal haul-out area of less than 100 animals near Bainbridge Island, about six miles from the proposed region of activity and outside of the area of potential effects. The haul-out consists of intertidal rocks and reef areas around Blakely Rocks (Jeffries *et al.,* 2000).

Acoustics—In air, harbor seal males produce a variety of low-frequency (less than 4 kHz) vocalizations, including snorts, grunts, and growls. Male harbor seals produce communication sounds in the frequency range of 100–1,000 Hz (Richardson *et al.,* 1995). Pups make individually unique calls for mother recognition that contain multiple harmonics with main energy below 0.35 kHz (Bigg, 1981; Thomson and Richardson, 1995). Harbor seals hear nearly as well in air as underwater and have lower thresholds than California sea lions (Kastak and Schusterman, 1998). Kastak and Schusterman (1998) reported airborne low frequency (100 Hz) sound detection thresholds at 65 dB for harbor seals. In air, they hear frequencies from 0.25–30 kHz and are most sensitive from 6–16 kHz (Richardson, 1995; Terhune and Turnbull, 1995; Wolski *et al.,* 2003).

Adult males also produce underwater sounds during the breeding season that typically range from 0.25–4 kHz (duration range: 0.1 s to multiple seconds; Hanggi and Schusterman 1994). Hanggi and Schusterman (1994) found that there is individual variation in the dominant frequency range of sounds between different males, and Van Parijs *et al.* (2003) reported oceanic, regional, population, and site-specific variation that could be vocal dialects. In water, they hear frequencies from 1–75 kHz (Southall *et al.,* 2007) and can detect sound levels as weak as 60–85 dB within that band. They are most sensitive at frequencies below 50 kHz; above 60 kHz sensitivity rapidly decreases.

California Sea Lion

Species Description—California sea lions are members of the Otariid family (eared seals). The species, *Zalophus californianus,* includes three subspecies: *Z. c. wollebaeki* (in the Galapagos Islands), *Z. c. japonicus* (in Japan, but now thought to be extinct), and *Z. c. californianus* (found from southern Mexico to southwestern Canada; referred to here as the California sea lion) (Carretta *et al.,* 2007). The breeding areas of the California sea lion are on islands located in southern California, western Baja California, and the Gulf of California (Carretta *et al.,* 2007). These three geographic regions are used to separate this subspecies into three stocks: (1) The U.S. stock begins at the U.S./Mexico border and extends northward into Canada, (2) the Western Baja California stock extends from the U.S./Mexico border to the southern tip of the Baja California peninsula, and (3) the Gulf of California stock which includes the Gulf of California from the southern tip of the Baja California peninsula and across to the mainland and extends to southern Mexico (Lowry *et al.,* 1992).

The California sea lion is sexually dimorphic. Males may reach 1,000 lb (454 kg) and 8 ft (2.4 m) in length; females grow to 300 lb (136 kg) and 6 ft (1.8 m) in length. Their color ranges from chocolate brown in males to a lighter, golden brown in females. At around 5 years of age, males develop a bony bump on top of the skull called a sagittal crest. The crest is visible in the dog-like profile of male sea lion heads, and hair around the crest gets lighter with age.

Status—The entire population of California sea lions cannot be counted because all age and sex classes are not ashore at the same time. Therefore, pups are counted during the breeding season and the number of births is estimated from the pup count. The size of the population is then estimated from the number of births and the proportion of pups in the population. This most recently resulted in a population estimate of 296,750 animals. The PBR level for this stock is 9,200 sea lions per year. California sea lions are not considered to be depleted under the MMPA or listed as threatened or endangered under ESA.

Behavior and Ecology—During the summer, California sea lions breed on islands from the Gulf of California to the Channel Islands and seldom travel more than about 31 mi (50 km) from the islands (Bonnell *et al.,* 1983). The primary rookeries are located in the California Channel Islands (Le Boeuf and Bonnell, 1980; Bonnell and Dailey, 1993). Their distribution shifts to the northwest in fall and to the southeast during winter and spring, probably in response to changes in prey availability (Bonnell and Ford, 1987).

The non-breeding distribution extends from Baja California north to Alaska for males, and encompasses the waters of California and Baja California for females (Reeves *et al.,* 2008; Maniscalco *et al.,* 2004). In the non-breeding season, an estimated 3,000 to 5,000 adult and sub-adult males migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island from September to May (Jeffries *et al.,* 2000) and return south the following spring (Mate, 1975; Bonnell *et al.,* 1983). During migration, they are occasionally sighted hundreds of miles offshore (Jefferson *et al.,* 1993). Females and juveniles tend to stay closer to the rookeries (Bonnell *et al.,* 1983). California sea lions do not breed in Washington, but are typically observed in Washington between August and April, after they have dispersed from breeding colonies.

California sea lions feed on a wide variety of prey, including many species of fish and squid (Everitt *et al.,* 1981; Roffe and Mate, 1984; Antonelis *et al.,* 1990; Lowry *et al.,* 1991). In some locations where salmon runs exist, California sea lions also feed on returning adult and out-migrating juvenile salmonids (London, 2006).

Sexual maturity occurs at around 4–5 years of age for California sea lions (Heath, 2002). California sea lions are gregarious during the breeding season and social on land during other times.

The California sea lion is the most frequently sighted pinniped found in Washington waters and uses haul-out sites along the outer coast, Strait of Juan de Fuca, and in Puget Sound. Haul-out sites are located on jetties, offshore rocks and islands, log booms, marine docks, and navigation buoys. This species is also frequently seen resting in the water together in groups in Puget Sound (Jeffries *et al.,* 2000). There are three documented California sea lion haul-outs near the proposed project area; all are located about six miles away and outside of the area of potential effects. These haul-outs include a yellow 'T' buoy off Alki Point, a yellow 'SG' buoy between West Point and Skiff Point, and a red buoy off Restoration Point (Jeffries *et al.,* 2000). The haul-outs have all been identified to have populations less than 100 individuals. It is assumed that California sea lions seen in and around the proposed project area use these haul-outs.

Acoustics—On land, California sea lions make incessant, raucous barking sounds; these have most of their energy at less than 2 kHz (Schusterman *et al.,* 1967). Males vary both the number and rhythm of their barks depending on the social context; the barks appear to control the movements and other behavior patterns of nearby conspecifics (Schusterman, 1977). Females produce barks, squeals, belches, and growls in the frequency range of 0.25–5 kHz, while pups make bleating sounds at 0.25–6 kHz. California sea lions produce two types of underwater sounds: clicks (or short-duration sound pulses) and barks (Schusterman *et al.,* 1966, 1967; Schusterman and Baillet, 1969). All of these underwater sounds have most of their energy below 4 kHz (Schusterman *et al.,* 1967).

The range of maximal hearing sensitivity for California sea lions underwater is between 1–28 kHz (Schusterman *et al.,* 1972). Functional underwater high frequency hearing limits are between 35–40 kHz, with peak sensitivities from 15–30 kHz (Schusterman *et al.,* 1972). The California sea lion shows relatively poor hearing at frequencies below 1 kHz (Kastak and Schusterman, 1998). Peak hearing sensitivities in air are shifted to lower frequencies; the effective upper hearing limit is approximately 36 kHz (Schusterman, 1974). The best range of sound detection is from 2–16 kHz (Schusterman, 1974). Kastak and Schusterman (2002) determined that hearing sensitivity generally worsens with depth—hearing thresholds were lower in shallow water, except at the highest frequency tested (35 kHz), where this trend was reversed. Octave band sound levels of 65–70 dB above the animal's threshold produced an average temporary threshold shift (TTS; discussed later in Potential Effects of the Specified Activity on Marine Mammals) of 4.9 dB in the California sea lion (Kastak *et al.,* 1999).

Steller Sea Lions

Species Description—Steller sea lions are the largest members of the Otariid (eared seal) family. Steller sea lions show marked sexual dimorphism, in which adult males are noticeably larger and have distinct coloration patterns from females. Males average about 1,500 lb (680 kg) and 10 ft (3 m) in length; females average about 700 lb (318 kg) and 8 ft (2.4 m) in length. Adult females have a tawny to silver-colored pelt. Males are characterized by dark, dense fur around their necks, giving a mane-like appearance, and light tawny coloring over the rest of their body (NMFS, 2008a). Steller sea lions are distributed mainly around the coasts to the outer continental shelf along the North Pacific Ocean rim from northern Hokkaido, Japan through the Kuril Islands and Okhotsk Sea, Aleutian Islands and central Bering Sea, southern coast of Alaska and south to California. The population is divided into the western and the eastern distinct population segments (DPSs) at 144° W (Cape Suckling, Alaska). The western DPS includes Steller sea lions that reside in the central and western Gulf of Alaska, Aleutian Islands, as well as those that inhabit coastal waters and breed in Asia (e.g., Japan and Russia). The eastern DPS extends from California to Alaska, including the Gulf of Alaska. Animals found in the proposed project area would be from the eastern DPS (NMFS, 1997a; Loughlin, 2002; Angliss and Outlaw, 2005).

Status—Steller sea lions were listed as threatened range-wide under the ESA in 1990. After division into two DPSs, the western DPS was listed as endangered under the ESA in 1997, while the eastern DPS remained classified as threatened. The eastern DPS breeds in rookeries located in southeast Alaska, British Columbia, Oregon, and California. While some pupping has been reported recently along the coast of Washington, there are no active rookeries in Washington. A final revised species recovery plan addresses both DPSs (NMFS, 2008a).

NMFS designated critical habitat for Steller sea lions in 1993. Critical habitat is associated with breeding and haul-out sites in Alaska, California, and Oregon, and includes so-called 'aquatic zones' that extend 3,000 ft (900 m) seaward in state and federally managed waters from the baseline or basepoint of each major rookery in Oregon and California (NMFS, 2008a). Three major rookery sites in Oregon (Rogue Reef, Pyramid Rock, and Long Brown Rock and Seal Rock on Orford Reef at Cape Blanco) and three rookery sites in California (Ano Nuevo, Southeast Farallon, and Sugarloaf Island and Cape Mendocino) are designated critical habitat (NMFS, 1993). There is no designated critical habitat within the proposed project area.

Factors that have previously been identified as threats to Steller sea lions include reduced food availability, possibly resulting from competition with commercial fisheries; incidental take and intentional kills during commercial fish harvests; subsistence take; entanglement in marine debris; disease; pollution; and harassment. Steller sea lions are also sensitive to disturbance at rookeries (during pupping and breeding) and haul-out sites.

The Recovery Plan for the Steller Sea Lion (NMFS, 2008a) states that the overall abundance of Steller sea lions in the eastern DPS has increased for a sustained period of at least three decades, and that pup production has increased significantly, especially since the mid-1990s. Between 1977 and 2002, researchers estimated that overall abundance of the eastern DPS had increased at an average rate of 3.1 percent per year (NMFS, 2008a; Pitcher *et al.,* 2007). NMFS' most recent stock assessment report estimates that population for the eastern DPS is a minimum of 52,847 individuals; this estimate is not corrected for animals at sea, and actual population is estimated to be within the range 58,334 to 72,223 (Allen and Angliss, 2010). The minimum count for Steller sea lions in Washington was 516 in 2001 (Pitcher *et al.,* 2007).

In the far southern end of Steller sea lion range (Channel Islands in southern California), population declined significantly after the 1930s—probably due to hunting and harassment (Bartholomew and Boolootian, 1960; Bartholomew, 1967)—and several rookeries and haul-outs have been abandoned. The lack of recolonization at the southernmost portion of the range (e.g., San Miguel Island rookery), despite stability in the non-pup portion of the overall California population, is likely a response to a suite of factors including changes in ocean conditions (e.g., warmer temperatures) that may be

contributing to habitat changes that favor California sea lions over Steller sea lions (NMFS, 2007) and competition for space on land, and possibly prey, with species that have experienced explosive growth over the past three decades (e.g., California sea lions and northern elephant seals [*Mirounga angustirostris*]). Although recovery in California has lagged behind the rest of the DPS, this portion of the DPS' range has recently shown a positive growth rate (NMML, 2012). While non-pup counts in California in the 2000s are only 34 percent of pre-decline counts (1927–1947), the population has increased significantly since 1990. Despite the abandonment of certain rookeries in California, pup production at other rookeries in California has increased over the last 20 years and, overall, the eastern DPS has increased at an average annual growth rate of 4.3 percent per year for 30 years. Even though these rookeries might not be recolonized, their loss has not prevented the increasing abundance of Steller sea lions in California or in the eastern DPS overall.

Because the eastern DPS of Steller sea lion is currently listed as threatened under the ESA, it is therefore designated as depleted and classified as a strategic stock under the MMPA. However, the eastern DPS has been considered a potential candidate for removal from listing under the ESA by the Steller sea lion recovery team and NMFS (NMFS, 2008), based on observed annual rates of increase. Although the stock size has increased, the status of this stock relative to its Optimum Sustainable Population (OSP) size is unknown. The overall annual rate of increase of the eastern stock has been consistent and long-term, and may indicate that this stock is reaching OSP.

Behavior and Ecology—Steller sea lions forage near shore and in pelagic waters. They are capable of traveling long distances in a season and can dive to approximately 1,300 ft (400 m) in depth. They also use terrestrial habitat as haul-out sites for periods of rest, molting, and as rookeries for mating and pupping during the breeding season. At sea, they are often seen alone or in small groups, but may gather in large rafts at the surface near rookeries and haul-outs. Steller sea lions prefer the colder temperate to sub-arctic waters of the North Pacific Ocean. Haul-outs and rookeries usually consist of beaches (gravel, rocky or sand), ledges, and rocky reefs. In the Bering and Okhotsk Seas, sea lions may also haul-out on sea ice, but this is considered atypical behavior (NOAA, 2010a). Steller sea lions are opportunistic predators, feeding primarily on fish and cephalopods, and their diet varies geographically and seasonally (Bigg, 1985; Merrick *et al.,* 1997; Bredesen *et al.,* 2006; Guenette *et al.,* 2006). Foraging habitat is primarily shallow, nearshore and continental shelf waters; freshwater rivers; and also deep waters (Reeves *et al.,* 2008; Scordino, 2010).

Steller sea lions are gregarious animals that often travel or haul out in large groups of up to 45 individuals (Keple, 2002). At sea, groups usually consist of female and subadult males; adult males are usually solitary while at sea (Loughlin, 2002). In the Pacific Northwest, breeding rookeries are located in British Columbia, Oregon, and northern California. Steller sea lions form large rookeries during late spring when adult males arrive and establish territories (Pitcher and Calkins, 1981). Large males aggressively defend territories while non-breeding males remain at peripheral sites or haul-outs. Females arrive soon after and give birth. Most births occur from mid-May through mid-July, and breeding takes place shortly thereafter. Most pups are weaned within a year. Non-breeding individuals may not return to rookeries during the breeding season but remain at other coastal haul-outs (Scordino, 2006).

The nearest Steller sea lion haul-out to the proposed project area is about six miles away and outside the area of potential effects. This haul-out is composed of net pens offshore of the south end of Bainbridge Island. The population of Steller sea lions at this haul-out has been estimated at less than 100 individuals (Jeffries *et al.,* 2000). Review of many anecdotal accounts indicates that this species is rarely seen in the area of potential effects.

Acoustics—Like all pinnipeds, the Steller sea lion is amphibious; while all foraging activity takes place in the water, breeding behavior is carried out on land in coastal rookeries (Mulsow and Reichmuth 2008). On land, territorial male Steller sea lions regularly use loud, relatively low-frequency calls/roars to establish breeding territories (Schusterman *et al.,* 1970; Loughlin *et al.,* 1987). The calls of females range from 0.03 to 3 kHz, with peak frequencies from 0.15 to 1 kHz; typical duration is 1.0 to 1.5 sec (Campbell *et al.,* 2002). Pups also produce bleating sounds. Individually distinct vocalizations exchanged between mothers and pups are thought to be the main modality by which reunion occurs when mothers return to crowded rookeries following foraging at sea (Mulsow and Reichmuth, 2008).

Mulsow and Reichmuth (2008) measured the unmasked airborne hearing sensitivity of one male Steller sea lion. The range of best hearing sensitivity was between 5 and 14 kHz. Maximum sensitivity was found at 10 kHz, where the subject had a mean threshold of 7 dB. The underwater hearing threshold of a male Steller sea lion was significantly different from that of a female. The peak sensitivity range for the male was from 1 to 16 kHz, with maximum sensitivity (77 dB re: 1μPa-m) at 1 kHz. The range of best hearing for the female was from 16 to above 25 kHz, with maximum sensitivity (73 dB re: 1μPa-m) at 25 kHz. However, because of the small number of animals tested, the findings could not be attributed to either individual differences in sensitivity or sexual dimorphism (Kastelein *et al.,* 2005).

Harbor Porpoise

Species Description—Harbor porpoises inhabit northern temperate and subarctic coastal and offshore waters. They are commonly found in bays, estuaries, harbors, and fjords less than 650 ft (200 m) deep. In the North Atlantic, they range from West Greenland to Cape Hatteras, North Carolina and from the Barents Sea to West Africa. In the North Pacific, they are found from Japan north to the Chukchi Sea and from Monterey Bay, California to the Beaufort Sea. There are ten stocks of harbor porpoises in U.S. waters: Bering Sea, Gulf of Alaska, Gulf of Maine-Bay of Fundy, Inland Washington, Monterey Bay, Morro Bay, Northern California-Southern Oregon, Oregon-Washington Coastal, San Francisco-Russian River, and Southeast Alaska. Harbor porpoises that could potentially be in the proposed project area would be part of the Inland Washington stock.

Harbor porpoises have a small, robust body with a short, blunt beak. They typically weigh 135–170 pounds and are about 5 to 5.5 ft (1.5 to 1.7 m) in length. Females are slightly larger than males. All animals are dark gray with a white underside.

Status—Aerial surveys of the Strait of Juan de Fuca, San Juan Islands, Gulf Islands, and Strait of Georgia (which includes waters inhabited by the Washington Inland stock of harbor porpoise) were conducted during August of 2002 and 2003. The average abundance estimate resulting from those surveys is 3,123. When corrected for availability and perception bias, the estimated abundance for the Washington Inland stock in 2002/2003 is 10,682 animals. However, because the most recent abundance estimate is more

than 8 years old, there is no current estimate of abundance available for this stock. Because there is no current estimate of minimum abundance, a PBR cannot be calculated for this stock. There is also no reliable data on long-term population trends of harbor porpoise for most waters of Oregon, Washington, or British Columbia. Harbor porpoises are not considered to be depleted under the MMPA or listed as threatened or endangered under the ESA.

Behavior and Ecology—Harbor porpoises are known to occur year-round in the inland trans-boundary waters of Washington and British Columbia and along the Oregon/Washington coast. Although differences in density exist between coastal Oregon/Washington and inland Washington waters, a specific stock boundary line cannot be identified based on biological or genetic differences. However, harbor porpoise movements and rates of intermixing within the eastern North Pacific are restricted, and there has been a significant decline in harbor porpoise sightings within southern Puget Sound since the 1940s, and today, harbor porpoise are rarely observed. Recently, there have been confirmed sightings of harbor porpoise in central Puget Sound (NMFS, 2006); however, no reports of harbor porpoises in the area of potential effects were made during 2011 (Whale Museum, 2011).

Harbor porpoises are non-social animals usually seen in groups of two to five animals. They feed on demersal and benthic species, mainly schooling fish and cephalopods.

Acoustics—Harbor porpoises are considered high-frequency cetaceans and their estimated auditory bandwidth ranges from 200 Hz to 180 kHz. Some studies suggest that harbor porpoises may be more sensitive to sound than other odontocetes (Lucke *et al.,* 2009; Kastelein *et al.,* 2011). In general, toothed whales produce a wide variety of sounds, which include species-specific broadband ''clicks'' with peak energy between 10 and 200 kHz, individually variable ''burst pulse'' click trains, and constant frequency or frequency-modulated (FM) whistles ranging from 4 to 16 kHz (Wartzok and Ketten, 1999). The general consensus is that the tonal vocalizations (whistles) produced by toothed whales play an important role in maintaining contact between dispersed individuals, while broadband clicks are used during echolocation (Wartzok and Ketten, 1999). Burst pulses have also been strongly implicated in communication, with some scientists suggesting that they play an important role in agonistic encounters (McCowan and Reiss, 1995), while others have proposed that they represent ''emotive'' signals in a broader sense, possibly representing graded communication signals (Herzing, 1996). Sperm whales, however, are known to produce only clicks, which are used for both communication and echolocation (Whitehead, 2003). Most of the energy of toothed whale social vocalizations is concentrated near 10 kHz, with source levels for whistles as high as 100 to 180 dB re 1 µPa at 1 m (Richardson *et al.,* 1995). No odontocete has been shown audiometrically to have acute hearing (<80 dB re 1 µPa) below 500 Hz (DoN, 2001). Sperm whales produce clicks, which may be used to echolocate (Mullins *et al.,* 1988), with a frequency range from less than 100 Hz to 30 kHz and source levels up to 230 dB re 1 µPa 1 m or greater (Mohl *et al.,* 2000).

Dall's Porpoise

Species Description—Dall's porpoises are common in the North Pacific Ocean, preferring temperate or cooler waters that are more than 600 ft (180 m) deep and with temperatures between 36–63 degrees Fahrenheit. For management purposes, Dall's porpoises inhabiting U.S. waters have been divided into two stocks: the Alaska stock and the California/Oregon/Washington stock. Dall's porpoises that could potentially be in the project area would be from the California/Oregon/Washington stock.

Dall's porpoises are fast swimming members of the porpoise family. They can weigh up to 480 pounds and grow up to 8 ft (2.4 m) long. They are identified by a dark gray or black body with variable contrasting white panels. These markings and colorations vary with geographic location and life stage.

Status—Dall's porpoise distribution in this region is highly variable between years and appears to be affected by oceanographic conditions. The most recent abundance estimate (42,000 animals) relies on estimates from 2005 and 2008 vessel-based line transect surveys off the coasts of California, Oregon, and Washington. Insufficient data are available to estimate current population trends. However, Dall's porpoises are generally considered reasonably abundant. There are an estimated 130,000 individuals in U.S. waters, including 76,000–99,500 off the Pacific coast (California, Oregon, and Washington) (NMFS, 2012). The PBR level for this stock is 257 animals per year. Dall's porpoises are not considered depleted under the MMPA or listed as threatened or endangered under the ESA.

Behavior and Ecology—Dall's porpoises can be found in offshore, inshore, and nearshore oceanic waters and are endemic to temperate waters of the North Pacific Ocean. Off the west coast, they are commonly seen in shelf, slope, and offshore waters. Sighting patterns from aerial and shipboard surveys conducted in California, Oregon, and Washington at different times suggest that north-south movement between these states occurs as oceanographic conditions change, both on seasonal and inter-annual scales. Only rarely have reports of Dall's porpoises been made for the area of potential effects. They feed on small schooling fish, mid- and deep-water fish, cephalopods, and occasionally crabs and shrimp. Feeding usually occurs at night when their prey vertically migrates up toward the water's surface. Dall's porpoises are capable of diving up to 1,640 ft (500 m) in order to reach their prey.

Acoustics—Dall's porpoises are considered high-frequency cetaceans their estimated auditory bandwidth ranges from 200 Hz to 180 kHz. General acoustic information on toothed whales was provided in the Harbor Porpoise section and is not repeated here.

Killer Whale

Species Description—Killer whales are the most widely distributed cetacean species in the world. Killer whales prefer colder waters, with the greatest abundances found within 800 km of major continents. Along the west coast of North America, killer whales occur along the entire Alaskan coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California. Based on morphology, ecology, genetics, and behavior, pods have been labeled as 'resident,' 'transient,' and 'offshore.' The distinct population segment of Southern resident killer whales is expected to have the highest potential of occurrence in the proposed project area. Transient killer whales may occasionally occur and are discussed where appropriate.

Killer whales are members of the dolphin family and can grow as long as 32 ft (9.8 m) and weigh as much as 22,000 pounds. They are identified by their large size and distinctive black and white appearance. Killer whales are highly social animals and often travel in groups of up to 50 animals. However, the Southern resident DPS is made up of three pods, and the one most likely to occur in the proposed project area—the J pod—has about 26 animals.

Status—The Eastern North Pacific Southern Resident stock is a trans-boundary stock including killer whales in inland Washington and southern British Columbia waters. Photo-

identification of individual whales through the years has resulted in a substantial understanding of this stock's structure, behaviors, and movements. In 1993, the three pods comprising this stock totaled 96 killer whales (Ford *et al.,* 1994). The population increased to 99 whales in 1995, then declined to 79 whales in 2001, and most recently number 86 whales in 2010 (Ford *et al.,* 2000, Center for Whale Research, unpubl. data).

The Southern Resident killer whale is listed as endangered under the ESA and as strategic under the MMPA. Critical habitat was designated in 2006 and includes all marine waters greater than 20 ft in depth. Critical habitat for this DPS includes the summer core area in Haro Strait and waters around the San Juan Islands; Puget Sound; and the Strait of Juan de Fuca (NOAA, 2006). On November 27, 2012, NMFS announced a 90-day finding on a petition to delist the Southern Resident killer whale DPS (77 FR 70733, November 27, 2012). NMFS found that the petition action may be warranted and initiated a status review of Southern Resident killer whales to determine further action. The request for information period closed on January 28, 2013 and NMFS has not yet made a determination. Transient killer whales are not listed under the ESA, but are considered depleted under the MMPA.

Behavior and Ecology—Killer whales feed on a variety of fish, marine mammals, and sharks, depending on their population and geographic location. Resident populations in the eastern North Pacific feed mainly on salmonids, such as Chinook and chum salmon.

A long-term database maintained by the Whale Museum monitors sightings and geospatial locations of Southern Resident killer whale, among other marine mammals, in inland waters of Washington State. Data are largely based on opportunistic sightings from a variety of sources (i.e., public reports, commercial whale watching, Soundwatch, Lime Kiln State Park land-based observations, and independent research reports), but are regarded as a robust but difficult to quantify inventory of occurrences. The data provide the most comprehensive assemblage of broad-scale habitat use by the DPS in inland waters.

Based on reports from 1990 to 2008, the greatest number of unique killer whale sighting-days near or in the area of potential effects occurred from November through January, although observations were made during all months except May (Osborne, 2008). Most observations were of Southern Resident killer whales passing west of Alki Point (82 percent of all observations), which lies on the edge or outside the area of potential effects; a pattern potentially due to the high level of human disturbance or highly degraded habitat features currently found within Elliott Bay. Of the pods that compose this DPS, the J pod, with an estimated 26 members, is the pod most likely to appear year-round near the San Juan Islands, in the lower Puget Sound near Seattle, and in Georgia Strait at the mouth of the Fraser River. The J pod tends to frequent the west side of San Juan Island in mid to late spring (CWR, 2011). An analysis of 2011 sightings described an estimated 93 sightings of Southern Resident killer whales near the area of potential effects (Whale Museum, 2011). During this same analysis period, 12 transient killer whales were also observed near the area of potential effects. The majority of all sightings in this area are of groups of killer whales moving through the main channel between Bainbridge Island and Elliott Bay and outside the area of potential effects (Whale Museum, 2011). The purely descriptive format of these observations make it impossible to discern what proportion of the killer whales observed entered into the area of potential effects; however, it is assumed individuals may enter into this area on occasion.

Acoustics—Killer whales are considered mid-frequency cetaceans and their estimated auditory bandwidth ranges from 150 Hz to 160 kHz. General acoustics information for toothed whales was provided in the Harbor Porpoise section and is not repeated here.

Humpback Whale

Species Description—Humpbacks are large, dark grey baleen whales with some areas of white. They can grow up to 60 ft (18 m) long and weigh up to 40 tons. They are well known for their long pectoral fins, which can reach up to 15 ft (4.6 m) in length. Humpback whales live in all major oceans from the equator to sub-polar latitudes.

In the North Pacific, there are at least three separate populations: the California/Oregon/Washington stock, the Central North Pacific stock, and the Western North Pacific stock. Any humpbacks that may occur in the proposed project area would be part of the California/Oregon/Washington stock.

Status—The best estimate of abundance for the California/Oregon/Washington stock is 2,043 animals and based on a mark-recapture study. Ship surveys provide some indication that humpback whales increased in abundance in California coastal waters between 1979–1980 and 1991 (Barlow, 1994) and between 1991 and 2005 (Barlow and Forney, 2007; Forney, 2007), but this increase was not steady, and estimates showed a slight dip in 2001. Mark-recapture population estimates have shown a long-term increase of about 7.5 percent per year (Calambokidis, 2009), although there have been short-term declines during this period, probably due to oceanographic variability. Population estimates for the entire North Pacific have also increased substantially and the growth rate implied by these estimates (6–7 percent) is consistent with the recently observed growth rate of the California/Oregon/Washington stock (NMFS, 2011).

As a result of commercial whaling, humpback whales are listed as endangered under the ESA throughout their range and also considered depleted under the MMPA.

Behavior and Ecology—Humpback whales complete the farthest migration of any mammal each year. During the summer months, the California/Oregon/Washington stock spends the majority of their time feeding along the coast of North America. Humpback whales filter feed on tiny crustaceans (mostly krill), plankton, and small fish. This stock then spends winter in coastal Central America and Mexico engaging in mating activities.

Humpback whales are found in coastal waters of Washington as they migrate from feeding grounds to winter breeding grounds. Humpback whales are considered rare visitors to Puget Sound and are not observed in the area every year. Past sightings around Puget Sound and Hood Canal have taken place well away from the proposed project area; however, it is possible that they may occur at least once during the proposed construction period.

Acoustics—Baleen whale vocalizations are composed primarily of frequencies below 1 kHz, and some contain fundamental frequencies as low as 16 Hz (Watkins *et al.,* 1987; Richardson *et al.,* 1995; Rivers, 1997; Moore *et al.,* 1998; Stafford *et al.,* 1999; Wartzok and Ketten, 1999) but can be as high as 24 kHz for humpback whales (Au *et al.,* 2006). Clark and Ellison (2004) suggested that baleen whales use low-frequency sounds not only for long-range communication, but also as a simple form of echo ranging, using echoes to navigate and orient relative to physical features of the ocean. Information on auditory function in baleen whales is extremely lacking. Sensitivity to low-frequency sound by

baleen whales has been inferred from observed vocalization frequencies, observed reactions to playback of sounds, and anatomical analyses of the auditory system. Although there is apparently much variation, the source levels of most baleen whale vocalizations lie in the range of 150–190 dB re 1 µPa at 1 m. Low-frequency vocalizations made by baleen whales and their corresponding auditory anatomy suggest that they have good low-frequency hearing (Ketten, 2000), although specific data on sensitivity, frequency or intensity discrimination, or localization abilities are lacking.

Gray Whale

Species Description—Gray whales are large baleen whales found mainly in shallow coastal waters of the North Pacific Ocean. They are identified by their mottled gray bodies, small eyes, and dorsal hump (not a dorsal fin). The can weigh up to 80,000 pounds and grow up to 50 ft (15 m) in length.

There are two isolated geographic distributions of gray whales in the North Pacific Ocean: the Eastern North Pacific stock and the Western North Pacific stock. Any gray whales occurring around the proposed project area would be part of the Eastern North Pacific stock, which includes the west coast of North America.

Status—Systematic counts of Eastern North Pacific gray whales migrating south along the Central California coast have been conducted by shore-based observers at Granite Canyon most years since 1967. The most recent abundance estimates are based on counts made during the 1997–1998, 2000–2001, and 2001–2002 southbound migrations, and range from about 18,000 to 30,000 animals. The population size of the Eastern North Pacific stock has been increasing over the past several decades despite an unusual mortality event in 1999 and 2000. The estimated annual rate of increase is 3.2–3.3 percent. In contrast the Western North Pacific population remains highly depleted.

While the Western North Pacific population is listed as endangered under the ESA, the Eastern North Pacific population was delisted from the ESA in 1994 after reaching a 'recovered' status. The Eastern North Pacific stock is not considered depleted under the MMPA.

Behavior and Ecology—Gray whales feed in shallow waters, usually 150–400 ft deep and adults consume over 1 ton of food per day during peak feeding periods. The gray whale is unique among cetaceans as a bottom-feeder that rolls onto its side, sucking up sediment from the seabed. Benthic organisms that live in the sediment are trapped by the baleen plates as water and silt are filtered out. Gray whales typically travel alone or in small, unstable groups.

Eastern North Pacific gray whales occur frequently off the coast of Washington during their southerly migration in November and December, and northern migration from March through May (Rugh *et al.,* 2001; Rice *et al.,* 1984). Gray whales are observed in Washington inland waters regularly between the months of January and September, with peaks between March and May. Gray whale sightings are typically reported in February through May and include an observation of a gray whale off the ferry terminal at Pier 52 heading toward the East Waterway in March 2010 (CWR, 2011; Whale Museum, 2012). Three gray whales were observed near the project area during 2011, but the narrative format of the observations makes it difficult to discern whether these individuals entered into the area of potential effects. It is assumed that gray whales might rarely occur in the area of potential effects.

Acoustics—Gray whale vocalizations and auditory function, like all baleen whale acoustics, is similar to that of humpback whales, described above. That information is not repeated here.

Potential Effects of the Specified Activity on Marine Mammals

SDOT's in-water construction activities (i.e., pile driving and removal) would introduce elevated levels of sound into the marine environment and have the potential to adversely impact marine mammals. The potential effects of sound from the proposed activities associated with the Elliott Bay Seawall project may include one or more of the following: tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and temporary or permanent hearing impairment (Richardson *et al.,* 1995). However, for reasons discussed later in this document, it is unlikely that there would be any cases of temporary or permanent hearing impairment resulting from these activities. As outlined in previous NMFS documents, the effects of sound on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.,* 1995):

- The sound may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient sound level, the hearing threshold of the animal at relevant frequencies, or both);
- The sound may be audible but not strong enough to elicit any overt behavioral response;
- The sound may elicit reactions of varying degrees and variable relevance to the well-being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area until the stimulus ceases, but potentially for longer periods of time;
- Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;
- Any anthropogenic sound that is strong enough to be heard has the potential to result in masking, or reduce the ability of a marine mammal to hear biological sounds at similar frequencies, including calls from conspecifics and underwater environmental sounds such as surf sound;
- If mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is chronic exposure to sound, it is possible that there could be sound-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and
- Very strong sounds have the potential to cause a temporary or permanent reduction in hearing sensitivity, also referred to as threshold shift. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment (PTS). In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Tolerance

Numerous studies have shown that underwater sounds from industrial activities are often readily detectable by marine mammals in the water at distances of many kilometers. However, other studies have shown that marine mammals at distances more than a few kilometers away often show no apparent response to industrial activities of various types (Miller *et al.,* 2005). This is often true even in cases when the

sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound from sources such as airgun pulses or vessels under some conditions, at other times, mammals of all three types have shown no overt reactions (e.g., Malme *et al.,* 1986; Richardson *et al.,* 1995; Madsen and Mohl, 2000; Croll *et al.,* 2001; Jacobs and Terhune, 2002; Madsen *et al.,* 2002; Miller *et al.,* 2005). In general, pinnipeds seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995) found that vessel sound does not seem to strongly affect pinnipeds that are already in the water. Richardson *et al.* (1995) went on to explain that seals on haul-outs sometimes respond strongly to the presence of vessels and at other times appear to show considerable tolerance of vessels, and Brueggeman *et al.* (1992) observed ringed seals (*Pusa hispida*) hauled out on ice pans displaying short-term escape reactions when a ship approached within 0.16–0.31 mi (0.25–0.5 km).

Masking

Masking is the obscuring of sounds of interest to an animal by other sounds, typically at similar frequencies. Marine mammals are highly dependent on sound, and their ability to recognize sound signals amid other sound is important in communication and detection of both predators and prey. Background ambient sound may interfere with or mask the ability of an animal to detect a sound signal even when that signal is above its absolute hearing threshold. Even in the absence of anthropogenic sound, the marine environment is often loud. Natural ambient sound includes contributions from wind, waves, precipitation, other animals, and (at frequencies above 30 kHz) thermal sound resulting from molecular agitation (Richardson *et al.,* 1995).

Background sound may also include anthropogenic sound, and masking of natural sounds can result when human activities produce high levels of background sound. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Ambient sound is highly variable on continental shelves (Thompson, 1965; Myrberg, 1978; Chapman *et al.,* 1998; Desharnais *et al.,* 1999). This results in a high degree of variability in the range at which marine mammals can detect anthropogenic sounds.

Although masking is a phenomenon which may occur naturally, the introduction of loud anthropogenic sounds into the marine environment at frequencies important to marine mammals increases the severity and frequency of occurrence of masking. For example, if a baleen whale is exposed to continuous low-frequency sound from an industrial source, this would reduce the size of the area around that whale within which it can hear the calls of another whale. The components of background noise that are similar in frequency to the signal in question primarily determine the degree of masking of that signal. In general, little is known about the degree to which marine mammals rely upon detection of sounds from conspecifics, predators, prey, or other natural sources. In the absence of specific information about the importance of detecting these natural sounds, it is not possible to predict the impact of masking on marine mammals (Richardson *et al.,* 1995). In general, masking effects are expected to be less severe when sounds are transient than when they are continuous. Masking is typically of greater concern for those marine mammals that utilize low frequency communications, such as baleen whales and, as such, is not likely to occur for pinnipeds or small odontocetes in the Region of Activity.

Disturbance

Behavioral disturbance is one of the primary potential impacts of anthropogenic sound on marine mammals. Disturbance can result in a variety of effects, such as subtle or dramatic changes in behavior or displacement, but the degree to which disturbance causes such effects may be highly dependent upon the context in which the stimulus occurs. For example, an animal that is feeding may be less prone to disturbance from a given stimulus than one that is not. For many species and situations, there is no detailed information about reactions to sound.

Behavioral reactions of marine mammals to sound are difficult to predict because they are dependent on numerous factors, including species, maturity, experience, activity, reproductive state, time of day, and weather. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of that change may not be important to the individual, the stock, or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals could be important. In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Pinniped responses to underwater sound from some types of industrial activities such as seismic exploration appear to be temporary and localized (Harris *et al.,* 2001; Reiser *et al.,* 2009).

Because the few available studies show wide variation in response to underwater and airborne sound, it is difficult to quantify exactly how pile driving sound would affect marine mammals in the area. The literature shows that elevated underwater sound levels could prompt a range of effects, including no obvious visible response, or behavioral responses that may include annoyance and increased alertness, visual orientation towards the sound, investigation of the sound, change in movement pattern or direction, habituation, alteration of feeding and social interaction, or temporary or permanent avoidance of the area affected by sound. Minor behavioral responses do not necessarily cause long-term effects to the individuals involved. Severe responses include panic, immediate movement away from the sound, and stampeding, which could potentially lead to injury or mortality (Southall *et al.,* 2007).

Southall *et al.* (2007) reviewed literature describing responses of pinnipeds to non-pulsed sound in water and reported that the limited data suggest exposures between approximately 90 and 140 dB generally do not appear to induce strong behavioral responses in pinnipeds, while higher levels of pulsed sound, ranging between 150 and 180 dB, will prompt avoidance of an area. It is important to note that among these studies, there are some apparent differences in responses between field and laboratory conditions. In contrast to the mid-frequency odontocetes, captive pinnipeds responded more strongly at lower levels than did animals in the field. Again, contextual issues are the likely cause of this difference. For airborne sound, Southall *et al.* (2007) note there are extremely limited data suggesting very minor, if any, observable behavioral responses by pinnipeds exposed to airborne pulses of 60 to 80 dB; however, given the paucity

of data on the subject, we cannot rule out the possibility that avoidance of sound in the Region of Activity could occur.

In their comprehensive review of available literature, Southall *et al.* (2007) noted that quantitative studies on behavioral reactions of pinnipeds to underwater sound are rare. A subset of only three studies observed the response of pinnipeds to multiple pulses of underwater sound (a category of sound types that includes impact pile driving), and were also deemed by the authors as having results that are both measurable and representative. However, a number of studies not used by Southall *et al.* (2007) provide additional information, both quantitative and anecdotal, regarding the reactions of pinnipeds to multiple pulses of underwater sound.

Harris *et al.* (2001) observed the response of ringed, bearded (*Erignathus barbatus*), and spotted seals (*Phoca largha*) to underwater operation of a single air gun and an eleven-gun array. Received exposure levels were 160 to 200 dB. Results fit into two categories. In some instances, seals exhibited no response to sound. However, the study noted significantly fewer seals during operation of the full array in some instances. Additionally, the study noted some avoidance of the area within 150 m of the source during full array operations.

Blackwell *et al.* (2004) is the only cited study directly related to pile driving. The study observed ringed seals during impact installation of steel pipe pile. Received underwater SPLs were measured at 151 dB at 63 m. The seals exhibited either no response or only brief orientation response (defined as ''investigation or visual orientation''). It should be noted that the observations were made after pile driving was already in progress. Therefore, it is possible that the low-level response was due to prior habituation.

Miller *et al.* (2005) observed responses of ringed and bearded seals to a seismic air gun array. Received underwater sound levels were estimated at 160 to 200 dB. There were fewer seals present close to the sound source during air gun operations in the first year, but in the second year the seals showed no avoidance. In some instances, seals were present in very close range of the sound. The authors concluded that there was ''no observable behavioral response'' to seismic air gun operations.

During a Caltrans installation demonstration project for retrofit work on the East Span of the San Francisco Oakland Bay Bridge, California, sea lions responded to pile driving by swimming rapidly out of the area, regardless of the size of the pile-driving hammer or the presence of sound attenuation devices (74 FR 63724).

Jacobs and Terhune (2002) observed harbor seal reactions to acoustic harassment devices (AHDs) with source level of 172 dB deployed around aquaculture sites. Seals were generally unresponsive to sounds from the AHDs. During two specific events, individuals came within 141 and 144 ft (43 and 44 m) of active AHDs and failed to demonstrate any measurable behavioral response; estimated received levels based on the measures given were approximately 120 to 130 dB.

Costa *et al.* (2003) measured received sound levels from an Acoustic Thermometry of Ocean Climate (ATOC) program sound source off northern California using acoustic data loggers placed on translocated elephant seals. Subjects were captured on land, transported to sea, instrumented with archival acoustic tags, and released such that their transit would lead them near an active ATOC source (at 0.6 mi depth [939 m]; 75-Hz signal with 37.5-Hz bandwidth; 195 dB maximum source level, ramped up from 165 dB over 20 min) on their return to a haul-out site. Received exposure levels of the ATOC source for experimental subjects averaged 128 dB (range 118 to 137) in the 60- to 90-Hz band. None of the instrumented animals terminated dives or radically altered behavior upon exposure, but some statistically significant changes in diving parameters were documented in nine individuals. Translocated northern elephant seals exposed to this particular non-pulse source began to demonstrate subtle behavioral changes at exposure to received levels of approximately 120 to 140 dB.

Several available studies provide information on the reactions of pinnipeds to non-pulsed underwater sound. Kastelein *et al.* (2006) exposed nine captive harbor seals in an approximately 82 × 98 ft (25 × 30 m) enclosure to non-pulse sounds used in underwater data communication systems (similar to acoustic modems). Test signals were frequency modulated tones, sweeps, and bands of sound with fundamental frequencies between 8 and 16 kHz; 128 to 130 ±3 dB source levels; 1- to 2-s duration (60–80 percent duty cycle); or 100 percent duty cycle. They recorded seal positions and the mean number of individual surfacing behaviors during control periods (no exposure), before exposure, and in 15-min experimental sessions (n = 7 exposures for each sound type). Seals generally swam away from each source at received levels of approximately 107 dB, avoiding it by approximately 16 ft (5 m), although they did not haul out of the water or change surfacing behavior. Seal reactions did not appear to wane over repeated exposure (i.e., there was no obvious habituation), and the colony of seals generally returned to baseline conditions following exposure. The seals were not reinforced with food for remaining in the sound field.

Reactions of harbor seals to the simulated sound of a 2-megawatt wind power generator were measured by Koschinski *et al.* (2003). Harbor seals surfaced significantly further away from the sound source when it was active and did not approach the sound source as closely. The device used in that study produced sounds in the frequency range of 30 to 800 Hz, with peak source levels of 128 dB at 1 m at the 80- and 160-Hz frequencies.

Ship and boat sound do not seem to have strong effects on seals in the water, but the data are limited. When in the water, seals appear to be much less apprehensive about approaching vessels. Some would approach a vessel out of apparent curiosity, including noisy vessels such as those operating seismic airgun arrays (Moulton and Lawson, 2002). Gray seals (*Halichoerus grypus*) have been known to approach and follow fishing vessels in an effort to steal catch or the bait from traps. In contrast, seals hauled out on land often are quite responsive to nearby vessels. Terhune (1985) reported that northwest Atlantic harbor seals were extremely vigilant when hauled out and were wary of approaching (but less so passing) boats. Suryan and Harvey (1999) reported that Pacific harbor seals commonly left the shore when powerboat operators approached to observe the seals. Those seals detected a powerboat at a mean distance of 866 ft (264 m), and seals left the haul-out site when boats approached to within 472 ft (144 m).

The studies that address responses of high-frequency cetaceans (such as the harbor porpoise) to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to chirps), including: Pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (around 90 to 120 dB), at least for initial exposures. All recorded exposures above 140 dB induced profound and sustained avoidance behavior in wild harbor porpoises

(Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies. Data on behavioral responses of high-frequency cetaceans to multiple pulses is not available. Although individual elements of some non-pulse sources (such as pingers) could be considered pulses, it is believed that some mammalian auditory systems perceive them as non-pulse sounds (Southall *et al.,* 2007).

Southall *et al.* (2007) also compiled known studies of behavioral responses of marine mammals to airborne sound, noting that studies of pinniped response to airborne pulsed sounds are exceedingly rare. The authors deemed only one study as having quantifiable results. Blackwell *et al.* (2004) studied the response of ringed seals within 500 m of impact driving of steel pipe pile. Received levels of airborne sound were measured at 93 dB at a distance of 63 m. Seals had either no response or limited response to pile driving. Reactions were described as ''indifferent'' or ''curious.''

Marine mammals are expected to traverse through and not remain in the project area. Therefore, animals are not expected to be exposed to a significant duration of construction sound.

Vessel Operations—A work/equipment barge and small range craft would be present in the Region of Activity at various times due to construction activities. The small range craft vessel would travel at low speeds and would be used to monitor for marine mammals in the area. Such vessels already use the Region of Activity in moderately high numbers; therefore, the vessels to be used in the Region of Activity do not represent a new sound source, only a potential increase in the frequency and duration of these sound source types.

There are very few controlled tests or repeatable observations related to the reactions of marine mammals to vessel noise. However, Richardson *et al.* (1995) reviewed the literature on reactions of marine mammals to vessels, concluding overall that pinnipeds and many odontocetes showed high tolerance to vessel noise. Mysticetes, too, often show tolerance of slow, quieter vessels. Because the Region of Activity is highly industrialized, it seems likely that marine mammals that transit the Region of Activity are already habituated to vessel noise, thus the additional vessels that would occur as a result of construction activities would likely not have an additional effect on these animals. Vessels occurring as a result of construction activities would be mostly stationary or moving slowly for marine mammal monitoring. Therefore, proposed vessel noise and operations in the Region of Activity is unlikely to rise to the level of harassment.

Physical Disturbance—Vessels and in-water structures have the potential to cause physical disturbance to marine mammals. As previously mentioned, various types of vessels already use the Region of Activity in high numbers. Tug boats and barges are slow moving and follow a predictable course. Marine mammals would be able to easily avoid these vessels while transiting through the Region of Activity and are likely already habituated to the presence of numerous vessels. Therefore, vessel strikes are extremely unlikely and, thus, discountable. Potential encounters would likely be limited to brief, sporadic behavioral disturbance, if any at all. Such disturbances are not likely to result in a risk of Level B harassment of marine mammals transiting the Region of Activity.

Hearing Impairment and Other Physiological Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds. Non-auditory physiological effects might also occur in marine mammals exposed to strong underwater sound. Possible types of non-auditory physiological effects or injuries that may occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds, particularly at higher frequencies. Non-auditory physiological effects are not anticipated to occur as a result of proposed construction activities. The following subsections discuss the possibilities of TTS and PTS.

TTS—TTS, reversible hearing loss caused by fatigue of hair cells and supporting structures in the inner ear, is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends.

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication. The fact that animals exposed to levels and durations of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is also notable and potentially of more importance than the simple existence of a TTS.

NMFS considers TTS to be a form of Level B harassment, as it consists of fatigue to auditory structures rather than damage to them. The NMFS-established 190-dB criterion is not considered to be the level above which TTS might occur. Rather, it is the received level above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals became available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. Therefore, exposure to sound levels above 180 and 190 dB (for cetaceans and pinnipeds, respectively) does not necessarily mean that an animal has incurred TTS, but rather that it may have occurred. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound.

Human non-impulsive sound exposure guidelines are based on exposures of equal energy (the same sound exposure level [SEL]; SEL is reported here in dB re: 1 μPa^2-s/re: 20 μPa^2-s for in-water and in-air sound, respectively) producing equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Until recently, previous marine mammal TTS studies have also

generally supported this equal energy relationship (Southall *et al.,* 2007). Three newer studies, two by Mooney *et al.* (2009a, b) on a single bottlenose dolphin (*Tursiops truncatus*) either exposed to playbacks of U.S. Navy mid-frequency active sonar or octave-band sound (4–8 kHz) and one by Kastak *et al.* (2007) on a single California sea lion exposed to airborne octave-band sound (centered at 2.5 kHz), concluded that for all sound exposure situations, the equal energy relationship may not be the best indicator to predict TTS onset levels. Generally, with sound exposures of equal energy, those that were quieter (lower SPL) with longer duration were found to induce TTS onset more than those of louder (higher SPL) and shorter duration. Given the available data, the received level of a single seismic pulse (with no frequency weighting) might need to be approximately 186 dB SEL in order to produce brief, mild TTS.

In free-ranging pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. However, systematic TTS studies on captive pinnipeds have been conducted (e.g., Bowles *et al.,* 1999; Kastak *et al.,* 1999, 2005, 2007; Schusterman *et al.,* 2000; Finneran *et al.,* 2003; Southall *et al.,* 2007). Specific studies are detailed here: Finneran *et al.* (2003) studied responses of two individual California sea lions. The sea lions were exposed to single pulses of underwater sound, and experienced no detectable TTS at received sound level of 183 dB peak (163 dB SEL). There were three studies conducted on pinniped TTS responses to non-pulsed underwater sound. All of these studies were performed in the same lab and on the same test subjects, and, therefore, the results may not be applicable to all pinnipeds or in field settings. Kastak and Schusterman (1996) studied the response of harbor seals to non-pulsed construction sound, reporting TTS of about 8 dB. The seal was exposed to broadband construction sound for 6 days, averaging 6 to 7 hours of intermittent exposure per day, with SPLs from just approximately 90 to 105 dB.

Kastak *et al.* (1999) reported TTS of approximately 4–5 dB in three species of pinnipeds (harbor seal, California sea lion, and northern elephant seal) after underwater exposure for approximately 20 minutes to sound with frequencies ranging from 100–2,000 Hz at received levels 60–75 dB above hearing threshold. This approach allowed similar effective exposure conditions to each of the subjects, but resulted in variable absolute exposure values depending on subject and test frequency. Recovery to near baseline levels was reported within 24 hours of sound exposure. Kastak *et al.* (2005) followed up on their previous work, exposing the same test subjects to higher levels of sound for longer durations. The animals were exposed to octave-band sound for up to 50 minutes of net exposure. The study reported that the harbor seal experienced TTS of 6 dB after a 25-minute exposure to 2.5 kHz of octave-band sound at 152 dB (183 dB SEL). The California sea lion demonstrated onset of TTS after exposure to 174 dB and 206 dB SEL.

Southall *et al.* (2007) reported one study on TTS in pinnipeds resulting from airborne pulsed sound, while two studies examined TTS in pinnipeds resulting from airborne non-pulsed sound. Bowles *et al.* (unpubl. data) exposed pinnipeds to simulated sonic booms. Harbor seals demonstrated TTS at 143 dB peak and 129 dB SEL. California sea lions and northern elephant seals experienced TTS at higher exposure levels than the harbor seals. Kastak *et al.* (2004) used the same test subjects as in Kastak *et al.* 2005, exposing the animals to non-pulsed sound (2.5 kHz octave-band sound) for 25 minutes. The harbor seal demonstrated 6 dB of TTS after exposure to 99 dB (131 dB SEL). The California sea lion demonstrated onset of TTS at 122 dB and 154 dB SEL. Kastak *et al.* (2007) studied the same California sea lion as in Kastak *et al.* 2004 above, exposing this individual to 192 exposures of 2.5 kHz octave-band sound at levels ranging from 94 to 133 dB for 1.5 to 50 min of net exposure duration. The test subject experienced up to 30 dB of TTS. TTS onset occurred at 159 dB SEL. Recovery times ranged from several minutes to 3 days.

Additional studies highlight the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts (Mooney *et al.,* 2009a, 2009b; Kastak *et al.,* 2007). Generally, with sound exposures of equal energy, quieter sounds (lower SPL) of longer duration were found to induce TTS onset more than louder sounds (higher SPL) of shorter duration (more similar to subbottom profilers). For intermittent sounds, less threshold shift will occur than from a continuous exposure with the same energy (some recovery will occur between intermittent exposures) (Kryter *et al.,* 1966; Ward, 1997). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends. Southall *et al.* (2007) considers a 6 dB TTS (that is, baseline thresholds are elevated by 6 dB) to be a sufficient definition of TTS-onset. NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider TTS-onset to be the lowest level at which Level B harassment may occur. Southall *et al.* (2007) summarizes underwater pinniped data from Kastak *et al.* (2005), indicating that a tested harbor seal showed a TTS of around 6 dB when exposed to a nonpulse noise at sound pressure level 152 dB re: 1 μPa for 25 minutes.

Some studies suggest that harbor porpoises may be more sensitive to sound than other odontocetes (Lucke *et al.,* 2009; Kastelein *et al.,* 2011). While TTS onset may occur in harbor porpoises at lower received levels (when compared to other odontocetes), NMFS' 160-dB and 120-dB threshold criteria are based on the onset of behavioral harassment, not the onset of TTS. The potential for TTS is considered within NMFS' analysis of potential impacts from Level B harassment.

Impact pile driving for the Elliott Bay Seawall project would produce initial airborne sound levels of approximately 112 dB peak at 160 ft (49 m) from the source, as compared to the level suggested by Southall *et al.* (2007) of 143 dB peak for onset of TTS in pinnipeds from multiple pulses of airborne sound. It is not expected that airborne sound levels would induce TTS in individual pinnipeds.

Although underwater sound levels produced by the proposed project may exceed levels produced in studies that have induced TTS in marine mammals, there is a general lack of controlled, quantifiable field studies related to this phenomenon, and existing studies have had varied results (Southall *et al.,* 2007). Therefore, it is difficult to extrapolate from these data to site-specific conditions for the proposed project. For example, because most of the studies have been conducted in laboratories, rather than in field settings, the data are not conclusive as to whether elevated levels of sound would cause marine mammals to avoid the Region of Activity, thereby reducing the likelihood of TTS, or whether sound would attract marine mammals, increasing the likelihood of TTS. In any case, there are no universally accepted standards for the amount of exposure time likely to induce TTS. While it may be inferred that TTS could theoretically result from the proposed project, it is impossible to quantify the magnitude of exposure, the duration of the effect, or

the number of individuals likely to be affected. Exposure is likely to be brief because marine mammals use the Region of Activity for transiting, rather than breeding or hauling out. In summary, it is expected that elevated sound would have only a slight probability of causing TTS in marine mammals.

PTS—When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. There is no specific evidence that exposure to underwater industrial sounds can cause PTS in any marine mammal (see Southall *et al.,* 2007). However, given the possibility that marine mammals might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to industrial activities might incur PTS. Richardson *et al.* (1995) hypothesized that PTS caused by prolonged exposure to continuous anthropogenic sound is unlikely to occur in marine mammals, at least for sounds with source levels up to approximately 200 dB. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Studies of relationships between TTS and PTS thresholds in marine mammals are limited; however, existing data appear to show similarity to those found for humans and other terrestrial mammals, for which there is a large body of data. PTS might occur at a received sound level at least several decibels above that inducing mild TTS.

Southall *et al.* (2007) propose that sound levels inducing 40 dB of TTS may result in onset of PTS in marine mammals. The authors present this threshold with precaution, as there are no specific studies to support it. Because direct studies on marine mammals are lacking, the authors base these recommendations on studies performed on other mammals. Additionally, the authors assume that multiple pulses of underwater sound result in the onset of PTS in pinnipeds when levels reach 218 dB peak or 186 dB SEL. In air, sound levels are assumed to cause PTS in pinnipeds at 149 dB peak or 144 dB SEL (Southall *et al.,* 2007). Sound levels this high are not expected to occur as a result of the proposed activities.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the Proposed Mitigation and Proposed Monitoring and Reporting sections). It is highly unlikely that marine mammals would receive sounds strong enough (and over a sufficient duration) to cause PTS (or even TTS) during the proposed activities. When taking the mitigation measures proposed for inclusion in the regulations into consideration, it is highly unlikely that any type of hearing impairment would occur as a result of SDOT's proposed activities.

Anticipated Effects on Marine Mammal Habitat

Construction activities would likely impact general marine mammal habitat and Southern resident killer whale critical habitat (designated throughout the Puget Sound region) in Elliott Bay and adjacent Puget Sound by producing temporary disturbances, primarily through elevated levels of underwater sound, reduced water quality, and physical habitat alteration associated with the structural footprint of the new seawall. Another potential temporary effect would be changes in prey species distribution during construction. However, overall, the proposed activity is expected to improve marine mammal habitat. Furthermore, sound levels constituting Level B harassment would not extend completely across Puget Sound, allowing marine mammals to avoid the higher levels of sound in Elliott Bay. Negative long-term effects are not anticipated.

A large portion of the Elliott Bay Seawall project is proposed habitat enhancement in the nearshore, which includes improving the quality of substrate, adding riparian plantings, burying contaminated sediment, and adding light-penetrating surfaces to overwater structures to enhance shallow water habitats for salmonid migration. In-water work during this part of the project may temporarily disturb marine mammals from general equipment/barge noise and temporarily increased turbidity. However, in the long-term, these habitat enhancements would likely benefit marine mammals indirectly as they are designed to increase habitat quality for prey species such as salmonids and marine invertebrates.

Marine mammals are especially vulnerable to contaminants because they are high up in the trophic level and may experience bioaccumulations. Water quality would generally improve as a result of the construction of stormwater treatment facilities associated with the Elliott Bay Seawall project. Currently, stormwater from the project area is discharged into Elliott Bay untreated. After completion of the proposed project, stormwater leaving the project area would receive treatment to remove suspended sediments and any pollutants bound to sediment. Analysis of post-project stormwater plumes conducted for the Endangered Species Act (ESA) analysis indicates that pollutants of concern to fish species will dilute to background concentrations generally within five feet of the outfalls; thus stormwater would have inconsequential effects on marine mammal prey species. The installation of the habitat features would generally bury up to two acres of low to moderately contaminated sediments and reduce the potential exposure of marine invertebrates and salmonids to contaminants and the potential for bioaccumulation up the food chain to marine mammals.

The underwater sounds would occur as short-term pulses (i.e., minutes to hours), separated by virtually instantaneous and complete recovery periods. These disturbances are likely to occur several times a day for up to a week, less than 1 week per year, for up to 7 years (5 years of activity would be authorized under this rule). Physical habitat alteration due to modification and replacement of existing in-water and over-water structures would also occur intermittently during construction, and would remain as the final, as-built project footprint for the design life of the Elliott Bay Seawall.

Elevated levels of sound may be considered to affect the in-water habitat of marine mammals via impacts to prey species or through passage obstruction (discussed later). However, due to the timing of the in-water work and the limited amount of pile driving that may occur on a daily basis, these effects on marine mammal habitat would be temporary and limited in duration. Any marine mammals that encounter increased sound levels would primarily be transiting the action area and foraging opportunistically. The direct loss of habitat available during construction due to sound impacts is expected to be minimal.

Impacts to Prey Species

Prey species for the various marine mammals that may occur in the proposed project area include marine invertebrates and fish. Short-term effects would occur to marine invertebrates immediately along the existing seawall during construction. The installation of the temporary containment wall would necessitate the removal of riprap that hosts various invertebrate and macroalgae species, and invertebrates present behind the temporary containment wall could experience

mortality or decreased growth during the first season of construction occurring at each location. This effect is expected to be minor and short-term on the overall population of marine invertebrates in Elliott Bay. Construction would also have temporary effects on salmonids and other fish species in the project area due to disturbance, turbidity, noise, and the potential resuspension of contaminants.

Impact pile driving would produce a variety of underwater sound levels. Underwater sound caused by vibratory installation would be less than impact driving (Caltrans, 2009; WSDOT, 2010b). Literature relating to the impacts of sound on marine fish species can be divided into categories which describe the following: (1) Pathological effects; (2) physiological effects; and (3) behavioral effects. Pathological effects include lethal and sub-lethal physical damage to fish; physiological effects include primary and secondary stress responses; and behavioral effects include changes in exhibited behaviors of fish. Behavioral changes might be a direct reaction to a detected sound or a result of anthropogenic sound masking natural sounds that the fish normally detect and to which they respond. The three types of effects are often interrelated in complex ways. For example, some physiological and behavioral effects could potentially lead ultimately to the pathological effect of mortality. Hastings and Popper (2005) reviewed what is known about the effects of sound on fish and identified studies needed to address areas of uncertainty relative to measurement of sound and the responses of fish. Popper *et al.* (2003/2004) also published a paper that reviews the effects of anthropogenic sound on the behavior and physiology of fish. Please see those sources for more detail on the potential impacts of sound on fish.

Underwater sound pressure waves can injure or kill fish (e.g., Reyff, 2003; Abbott and Bing-Sawyer, 2002; Caltrans, 2001; Longmuir and Lively, 2001; Stotz and Colby, 2001). Fish with swim bladders, including salmon, steelhead, and sturgeon, are particularly sensitive to underwater impulsive sounds with a sharp sound pressure peak occurring in a short interval of time (Caltrans, 2001). As the pressure wave passes through a fish, the swim bladder is rapidly squeezed due to the high pressure, and then rapidly expanded as the underpressure component of the wave passes through the fish. The pneumatic pounding may rupture capillaries in the internal organs as indicated by observed blood in the abdominal cavity and maceration of the kidney tissues (Caltrans, 2001). Although eulachon lack a swim bladder, they are also susceptible to general pressure wave injuries including hemorrhage and rupture of internal organs, as described above, and damage to the auditory system. Direct take can cause instantaneous death, latent death within minutes after exposure, or can occur several days later. Indirect take can occur because of reduced fitness of a fish, making it susceptible to predation, disease, starvation, or inability to complete its life cycle.

All in-water work would occur during the designated in-water work window to avoid and minimize effects on juvenile salmonids. Additionally, marine resident fish species are only present in limited numbers along the seawall during the work season and primarily occur during the summer months when work would not be occurring. Prey species are expected to incur a long-term benefit from the proposed habitat enhancements; these enhancements would improve primary and secondary productivity and migratory habitat for salmonids.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(A) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). NMFS and SDOT worked to devise a number of mitigation measures designed to minimize impacts to marine mammals to the level of least practicable adverse impact.

Limited Impact Pile Driving

All sheet piles would be installed using a vibratory driver, unless impact driving is required to install piles that encounter consolidated sediments or for proofing load bearing sections. The use of vibratory pile driving reduces pile driving noise to levels less than the injury threshold for marine mammals. Any impact driving used in conjunction with vibratory pile driving would employ attenuation measures such as a cushioning block, where applicable. Any attenuation measures that become available for vibratory pile driving would also be considered for the proposed project.

Containment of Impact Pile Driving

The majority of permanent concrete piles would be driven behind the temporary containment wall that would function as a physical barrier to partially attenuate pile driving noise. Estimated noise-reduction values are not readily available for this attenuation type; however, it has been shown that the use of cofferdams, which are analogous to the temporary containment wall, is effective at reducing noise up to 10 dB (Caltrans, 2009).

Additional Attenuation Measures

Other attenuation measures such as bubble curtains may be employed as necessary to reduce sound levels. While bubble curtains were considered, they are not being proposed due to the potential for resuspension of contaminated materials and/or existing sediment caps; however, in some locations they could be feasible for the concrete pile driving and would be considered if sound levels are measured higher than what is shown in this analysis. In the event that underwater sound monitoring shows that noise generation from pile installation exceeds the levels originally expected, the implementation of additional attenuation devices would be reevaluated and discussed with NMFS.

Ramp-up

The objective of a ramp-up is to alert any animals close to the activity and allow them time to move away, which would expose fewer animals to loud sounds, including both underwater and above water sound. This procedure also ensures that any animals missed during monitoring within the exclusion zone would have the opportunity to move away from the activity and avoid injury. During all in-water pile-related activities, ramp-up would be used at the beginning of each day's in-water pile-related activities or if pile driving has ceased for more than 1 hour. If a vibratory driver is used, contractors would be required to initiate sound from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure would be repeated two additional times before full energy may be achieved. If a non-diesel impact hammer is used, contractors would be required to provide an initial set of strikes from the impact hammer at reduced energy, followed by a 1-minute waiting period, then two subsequent sets. The reduced energy of an individual hammer cannot be quantified because they vary by individual drivers. Also, the number of strikes would vary at reduced energy

because raising the hammer at less than full power and then releasing it results in the hammer 'bouncing' as it strikes the pile, resulting in multiple strikes.

Marine Mammal Exclusion Zones

For this proposed project, the purpose of an exclusion zone is to prevent Level A harassment of all marine mammals and to reduce take of large whales from Level B harassment. SDOT would establish different exclusion zones for different types of in-water pile-related activities:

1. An exclusion zone for pinnipeds and small cetaceans with a radius of 200 ft waterward of each steel sheet pile source during impact pile driving;

2. An exclusion zone for pinnipeds and small cetaceans with a radius of 50 ft waterward of each concrete piling point source during impact pile driving;

3. An exclusion zone for large whales with a radius of 1,000 m (3,280 ft) waterward of each steel sheet or concrete pile during impact pile driving; and

4. An exclusion zone for large whales with a radius of 3,981 m (2.5 miles) waterward of each steel sheet pile source during vibratory pile driving.

The last two exclusion zones were recommended by NMFS to prevent the take of large whales by Level A harassment and reduce the take of large whales by Level B harassment. While the 3,981 m (2.5 mile) exclusion zone does not extend to the Level B harassment ispoleth for vibratory pile driving (6,276 m [3.9 miles]), it does cover a majority of the radius and allows for protected species observers to easily monitor the entrance of Elliott Bay from land. Temporary buoys would be used, as feasible, to mark the distance to the exclusion zones. These zones are intended to provide a physical threshold for a stop-work order for in-water pile-related activities if a marine mammal nears the proposed work area. At the start of in-water pile-related construction each day, a minimum of one qualified protected species observer would be staged on land (or an adjacent pier) near the location of in-water activities to document any marine mammal that approaches the exclusion zones. Additional land-based observers would be deployed if needed to ensure the construction area is adequately monitored. Land-based monitoring would occur throughout each day of active pile-related activities.

If a marine mammal is sighted approaching the work area, protected species observers would immediately notify the construction personnel operating the pile-related equipment of the direction of travel and distance relative to the exclusion zones. SDOT initially proposed that in-water pile-related stop-work order would be immediately triggered if a cetacean approaches or enters an exclusion zone or if an observer documents a pinniped displaying clear signs of stress or distress, such as difficulty swimming, breathing, or other disoriented behaviors. However, based on NMFS recommendation, a stop-work order would be triggered if any marine mammal enters an exclusion zone, regardless of observed behavior. SDOT's proposed exclusion zones would minimize injurious impacts to all marine mammals from increased sound exposures and would prevent take of large whales. The exclusion zones must not be obscured by fog or poor lighting conditions in order for in-water pile-related activities to begin/continue.

Shutdown and Delay Procedures

If a marine mammal is seen approaching or entering an exclusion zone, observers would immediately notify the construction personnel operating the pile-related equipment to shutdown pile-related activities. If a marine mammal(s) is present within the applicable exclusion zone prior to in-water pile-related activities, pile driving/removal would be delayed until the animal(s) has left the exclusion zone or until 15 minutes have elapsed without observing the animal.

Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. The proposed rule comment period will afford the public an opportunity to submit recommendations, views, and/or concerns regarding this action and the proposed mitigation measures.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth, where applicable, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Visual Monitoring

In addition to the mitigation monitoring described in the Marine Mammal Exclusion Zones section above, a minimum of two protected species observers would be positioned on land at the north and sound ends of Elliott Bay near the 2.5 mile exclusion zone to monitor for marine mammals during vibratory pile-related activities or any other construction activities that may pose a threat to marine mammals moving through the area. These observers would have no other responsibilities while on station. Observers would also be responsible for recording the location of all marine mammal sightings and logging information onto marine mammal sighting forms. Observers would use the naked eye, wide-angle binoculars with reticles, and spotting scopes to scan the area around their station. SDOT proposes to employ this monitoring every day during which vibratory pile driving occurs.

Each observer would work a maximum of 8 hours per day and would be relieved by a fresh observer if pile driving occurs over a longer day (i.e., 12 or 16 hours). The number of observers would be increased and/or positions changed to ensure full visibility of the area. All monitoring would begin at least 30 minutes prior to the start of in-water pile-related activities and continue during active construction. At a minimum, observers would record the following information:

- Date of observation period, monitoring type (land-based/boat-based), observer name and location,

climate and weather conditions, and tidal conditions;

- Environmental conditions that could confound marine mammal detections and when/where they occurred;
- For each marine mammal sighting, the time of initial sighting and duration to the end of the sighting period;
- Observed species, number, group composition, distance to pile-related activities, and behavior of animals throughout the sighting;
- Discrete behavioral reactions, if apparent;
- Initial and final sighting locations marked on a grid map;
- Pile-related activities taking place during each sighting and if/why a shutdown was or was not triggered; and
- The number of takes (by species) of marine mammals, their locations, and behavior.

Acoustic Monitoring

SDOT would conduct acoustic monitoring during pile-related in-water work. The purpose of this monitoring would be to identify or confirm noise levels for pile-related work during in-water construction. Collection of acoustic data would be accomplished from both a drifting boat to reduce the effect of flow noise, and attached on or adjacent to piers located at 10 m from the pile source. All acoustical recordings would be conducted 1 m below the water surface and 1 m above the sea floor. Background noise recordings (in the absence of pile driving) would also be made to provide a baseline background noise profile. The results and conclusions of the study would be summarized and presented to NMFS with recommendations for any modifications to the monitoring plan or exclusion zones.

Underwater hydrophones and an airborne microphone would be used for acoustic recordings. All sensors, signal conditioning equipment, and sampling equipment would be calibrated at the start of the monitoring period and rechecked at the start of each day. A stationary two-channel hydrophone recording system would be deployed to record a representative sample (subset of piles) during the monitoring period. Prior to monitoring, water depth measurements would be taken to ensure that hydrophones do not drag on the bottom during tidal changes. One hydrophone would be placed at mid-depth and the other would be placed closer to the bottom (70 to 85 percent of the water depth). The depth with respect to the bottom may vary due to tidal changes and current effects since the hydrophones may be supported from a floating platform.

Appropriate measures would be taken to eliminate strumming of the hydroacoustic cable in the current and minimize flow noise over the hydrophones. There would be a direct line of acoustic transmission through the water column between the pile and the hydrophones in all cases, without any interposing structures, including other piles. At least one stationary land-based microphone would be deployed to record airborne sound levels produced during pile installation and removal. The microphone would measure far-field airborne sounds. A sound level meter with microphone would be located in the near-field if logistical and security constraints allow for the collection of near-field source level measurements. Near-field measurements would not be continuous and would be used to identify which sound sources are making significant contributions to the overall noise levels measured at the shoreline microphones. Specific locations would be determined by ease of access (terrain restrictions and presence of a road) and security permission. The microphone will be calibrated at the beginning of each day of monitoring activity.

To empirically verify the modeled behavioral disturbance zones, underwater and airborne acoustic monitoring would occur for the first five steel sheet pile and the first five concrete piles during the duration of pile driving. If a representative sample has not been achieved after the five piles have been monitored (e.g., if there is high variability of sound levels between pilings), acoustic monitoring would continue until a representative acoustic sample has been collected. Post-analysis of underwater sound level signals would include the following:

- RMS values (average, standard deviation/error, minimum, and maximum) for each recorded pile. The 10-second RMS averaged values will be used for determining the source value and extent of the 120 dB underwater isopleth;
- Frequency spectra for each functional hearing group; and
- Standardized underwater source levels to a reference distance of 10 m (33 ft).

Post-analysis of airborne noise would be presented in an unweighted format and include:

- The unweighted RMS values (average, minimum, and maximum) for each recorded pile. The average values would be used for determining the extent of the airborne isopleths relative to species-specific criteria;
- Frequency spectra from 10 Hz to 20 kHz for representative pile-related activity; and
- Standardized airborne source levels to a reference distance of approximately 15 m (50 ft).

It is intended that acoustic monitoring would be performed using a standardized method that would facilitate comparisons with other studies. Real-time monitoring of noise levels during in-water pile-related activities would ensure sound levels do not surpass those estimated in SDOT's application. In the event noise does surpass estimated levels for extended periods of time, construction would be stopped and NMFS would be contacted to discuss the cause and potential solutions.

Reporting

All marine mammal sightings would be documented by observers on a NMFS-approved sighting form. Takes of marine mammals would be recorded for any individual present within the area of potential effects. Marine mammal reporting would include all data described previously under Proposed Monitoring, including observation dates, times, and conditions, and any correlations of observed marine mammal behavior with activity type and received levels of sound, to the extent possible.

SDOT would also submit a report(s) concerning the results of all acoustic monitoring. This report(s) would include:

- Size and type of piles;
- A detailed description of any sound attenuation device used, including design specifications;
- The impact hammer energy rating used to drive the piles, make and model of the hammer(s), and description of the vibratory hammer;
- A description of the sound monitoring equipment;
- The distance between hydrophones and depth of water and the hydrophone locations;
- The depth of the hydrophones;
- The distance from the pile to the water's edge;
- The depth of water in which the pile was driven
- The depth into the substrate that the pile was driven
- The physical characteristics of the bottom substrate into which the pile were driven;
- The total number of strikes to drive each pile;
- The results of the hydroacoustic monitoring, including the frequency spectrum, ranges and means for the peak and RMS sound pressure levels,

and an estimation of the distance at which RMS values reach the relevant marine mammal thresholds and background sound levels. Vibratory driving results would include the maximum and overall average RMS calculated from 30-s RMS values during the drive of the pile;

- A description of any observable marine mammal behavior in the immediate area and, if possible, correlation to underwater sound levels occurring at that time.

Annual Reports—An annual report on marine mammal monitoring and mitigation would be submitted to NMFS, Office of Protected Resources, and NMFS, Northwest Regional Office. The annual reports would summarize information presented in the weekly reports and include data collected for each distinct marine mammal species observed in the project area, including descriptions of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to activities would also be included in the annual reports. Additional information that would be recorded during activities and contained in the reports include: date and time of marine mammal detections, weather conditions, species identification, approximate distance from the source, and activity at the construction site when a marine mammal is sighted.

Comprehensive Final Report—In addition to annual reports, NMFS proposes to require SDOT to submit a draft comprehensive final report to NMFS, Office of Protected Resources, and NMFS, Northwest Regional Office, 180 days prior to the expiration of the regulations. This comprehensive technical report would provide full documentation of methods, results, and interpretation of all monitoring during the first 4.5 years of the regulations. A revised final comprehensive technical report, including all monitoring results during the entire period of the regulations, would be due 90 days after the end of the period of effectiveness of the regulations.

Adaptive Management

The final regulations governing the take of marine mammals incidental to the specified activities at Elliott Bay would contain an adaptive management component. In accordance with 50 CFR 216.105(c), regulations for the proposed activity must be based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review. The use of adaptive management would allow NMFS to consider new information from different sources to determine if mitigation or monitoring measures should be modified (including additions or deletions) if new data suggest that such modifications are appropriate. The following are some of the possible sources of applicable data:

- Results from SDOT's monitoring from the previous year;
- Results from general marine mammal and sound research; or
- Any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

If, during the effective dates of the regulations, new information is presented from monitoring, reporting, or research, these regulations may be modified, in whole or in part, after notice and opportunity of public review, as allowed for in 50 CFR 216.105(c). In addition, LOAs would be withdrawn or suspended if, after notice and opportunity for public comment, the Assistant Administrator finds, among other things, that the regulations are not being substantially complied with or that the taking allowed is having more than a negligible impact on the species or stock, as allowed for in 50 CFR 216.106(e). That is, should substantial changes in marine mammal populations in the project area occur or monitoring and reporting show that Elliott Bay Seawall actions are having more than a negligible impact on marine mammals, then NMFS reserves the right to modify the regulations and/or withdraw or suspend LOAs after public review.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines 'harassment' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].'' Take by Level B harassment only is anticipated as a result of the installation and removal of piles via impact and vibratory methods. No take by injury, serious injury, or death is anticipated.

Typically, incidental take is estimated by multiplying the area of the zone of influence by the local animal density. This provides an estimate of the number of animals that might occupy the zone of influence at any time; however, there are no density estimates for marine mammal populations in Puget Sound. Therefore, the proposed take was estimated using anecdotal reports, incidental observations, and data from previous incidental take authorizations around Puget Sound. Anecdotal reports indicate that at most one to five individuals of each pinniped species may be present in the nearshore of the Seattle waterfront on a single day. Pinnipeds in the area are likely traveling to and from nearby haul-outs; harbor seals haul out around Alki Point, about 2.4 miles from the seawall and near Bainbridge Island, about six miles from the seawall; California sea lions haul out on buoys off Alki Point, between West Point and Skiff Point, and off Restoration Point, all about six miles from the seawall; and Steller sea lions haul out in Puget Sound near Bainbridge Island, seven miles from the seawall. Each pinniped haul out site is estimated to have less than 100 individuals, and the closest haul-out is 2.4 miles from the seawall. All other haul-outs are outside of the area of potential effects. SDOT provided an overestimate of up to 50 individuals in the area of potential effects each day of pile driving activities. SDOT then used the estimated number of vibratory pile installation/removal days to calculate the maximum number of takes that may occur each year. SDOT's estimated takes for harbor seals are presented in Table 10 of their LOA application.

However, NMFS determined that the take requests for pinnipeds are unreasonably overestimated. Considering (1) the lack of pinniped haul outs within the area of potential effects; (2) the likelihood that some animals may avoid the area during construction; (3) marine mammal surveys and take estimates from other projects in Puget Sound; and (4) anecdotal reports, NMFS estimates that a maximum of 20 harbor seals, 20 California sea lions, and 10 Steller sea lions may be present within the Level B harassment isopleth each day. Furthermore, NMFS used 35 days as the estimated number of vibratory and impact pile installation/removal days each year (as opposed to just vibratory) to calculate potential take. The total days of pile installation/removal were calculated based on the information in Tables 3 through 5 of this document. These estimates are still considered to overestimate the actual number of takes that would occur because takes are

unlikely to occur during all impact pile driving activities (due to the smaller harassment isopleths) and the use of sound attenuation devices and other mitigation measures, which are not taken into consideration of the estimation of take. Furthermore, many takes would likely occur to the same individuals on different days and do not represent a total number of individuals.

SDOT does not have any documented occurrence of harbor porpoises or Dall's porpoise in the area of potential effects. However, these species are known to occur in adjacent areas of Puget Sound and may pass by Elliott Bay during the proposed activity. Average pod sizes are nine and 1–2 for harbor porpoise and Dall's porpoise, respectively. Therefore, SDOT and NMFS overestimate that a maximum of nine harbor porpoises and two Dall's porpoise could occur within the Level B harassment isopleth during each day of vibratory pile installation/removal. It is unlikely that any porpoises would be exposed to Level B take from impact pile driving due to the smaller harassment isopleths and absence from the nearshore area.

NMFS considers the take of large whales to be less likely due to the designated exclusion zone and shutdown procedures designed to reduce take by Level B harassment, as described in the Proposed Mitigation section of this document. However, because the Level B harassment zone extends into Puget Sound (where large whales are more likely to transit), NMFS is proposing to authorize take for a limited number of large whales. Based on the average group size of two animals and observed occurrence around the proposed project area, NMFS estimates that up to eight gray whales and four humpback whales per year (up to 40 gray whales and 20 humpback whales total over a 5-year period) may be exposed to sound that constitutes Level B harassment. For these reasons, NMFS is proposing to authorize take of eight marine mammals species: harbor seal, California sea lion, Steller sea lion, harbor porpoise, Dall's porpoise, killer whale, gray whale, and humpback whale. NMFS' estimated take of each species is summarized in Table 8.

TABLE 8—ESTIMATED MARINE MAMMAL TAKES FOR PROPOSED AUTHORIZATION

Species	Estimated maximum number of takes per day	Average number of pile driving days per year	Estimated number of takes per year	Percentage of stock that may be taken
Harbor seal	20	35 (vibratory + impact)	700	4.8
California sea lion	5	35 (vibratory + impact)	175	<0.1
Steller sea lion	5	35 (vibratory + impact)	175	0.3
Harbor porpoise	9	29 (vibratory)	315	2.9
Dall's porpoise	2	29 (vibratory)	70	0.2
Killer whale (Southern resident)	.....	.....	16	20
Killer whale (transient)	.....	.....	24	6.9
Gray whale	.....	.....	8	<0.1
Humpback whale	.....	.....	4	0.2

Negligible Impact and Small Numbers Analyses and Preliminary Determination

NMFS has defined 'negligible impact' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

Incidental take, in the form of Level B harassment only, is likely to occur as a result of marine mammal exposure to elevated levels of sound caused by impact and vibratory pile installation. No take by injury, serious injury, or death is anticipated or proposed to be authorized. By incorporating the proposed mitigation measures, including marine mammal monitoring and shut-down procedures described previously, harassment to individual marine mammals from the proposed activities is expected to be limited to temporary behavioral impacts. SDOT assumes that all individuals travelling past the project area would be exposed each time they pass the area and that all exposures would cause disturbance. NMFS agrees that this represents a worst-case scenario and is therefore sufficiently precautionary. There is only one pinniped haul-out located within the area of potential effects (2.4 miles from the seawall). The shutdown zone monitoring proposed as mitigation, and the small size of the zones in which injury may occur, makes any potential injury of marine mammals extremely unlikely, and therefore discountable. Because marine mammal exposures would be limited to the period they are transiting the disturbance zone, with potential repeat exposures separated by days to weeks, the probability of experiencing TTS is also considered unlikely.

These activities may cause individuals to temporarily disperse from the area or avoid transit through the area. However, existing traffic sound, commercial vessels, and recreational boaters already occur in the area. Thus, it is likely that marine mammals are habituated to these disturbances while transiting around and within Elliott Bay and would not be significantly hindered from transit. Behavioral changes are expected to potentially occur only when an animal is transiting a disturbance zone at the same time that the proposed activities are occurring. Although marine mammals are unlikely to be deterred from passing through the area, even temporarily, they may respond to the underwater sound by passing through the area more quickly, or they may experience stress as they pass through the area. Another possible effect is that the underwater sound would evoke a stress response in the exposed individuals, regardless of transit speed. However, the period of time during which an individual would be exposed to sound levels that might cause stress is short given their likely speed of travel through the affected areas. Considering the industrialized area where pile driving would occur, it is unlikely that the potential increased stress would have a significant effect on individuals or any effect on the population as a whole.

Therefore, NMFS finds it unlikely that the amount of anticipated disturbance would significantly change marine

mammals' use of Elliott Bay. NMFS does not anticipate any effects on haul-out behavior because the closest haul-out is 2.4 miles from the seawall. All other effects of the proposed action are at most expected to have a discountable or insignificant effect on marine mammals, including an insignificant reduction in the quantity and quality of prey otherwise available.

Any adverse effects to prey species would occur on a temporary basis during project construction. Given the restricted in-water work window designed for the protection of salmonids and the short-term nature of effects to fish populations, as well as conservation and habitat mitigation measures that would continue into the future, the project is not expected to have significant effects on the distribution or abundance of potential prey species in the long-term. Therefore, these temporary impacts are expected to have an inconsequential on habitat for pinniped prey species.

A detailed description of potential impacts to individual pinnipeds was provided previously in this document. The following sections put into context what those effects mean to the respective populations or stocks of each of the marine mammal species potentially affected.

Harbor Seal

There is no current abundance estimate of the Washington inland stock of harbor seals, but the last estimate (more than 8 years ago) was 14,612. While new data are needed, the population is thought to be stable. The estimated take (by behavioral harassment only) of 700 individuals per year by Level B harassment is small relative to a stable population of approximately 14,612 (4.8 percent), and is not expected to impact annual rates of recruitment or survival of the stock. Harbor seals are not listed under the ESA nor considered depleted under the MMPA.

California Sea Lion

The U.S. stock of California sea lions is estimated at 296,750 and may be at carrying capacity. Generally, California sea lions in the Pacific Northwest are subadult or adult males (NOAA, 2008). The estimated take (by behavioral harassment only) of 175 individuals per year is small relative to a population of approximately 296,750 (<0.1 percent), and is not expected to impact annual rates of recruitment or survival of the stock. California sea lions are not listed under the ESA nor considered depleted under the MMPA.

Steller Sea Lion

The total population of the eastern DPS of Steller sea lions is estimated to be within a range from approximately 58,334 to 72,223 animals with an overall annual rate of increase of 3.1 percent throughout most of the range (Oregon to southeastern Alaska) since the 1970s (Allen and Angliss, 2010). In 2006, the NMFS Steller sea lion recovery team proposed removal of the eastern stock from listing under the ESA based on its annual rate of increase. The total estimated take (by behavioral harassment only) of 175 individuals per year is small compared to a population of approximately 65,000 (0.3 percent).

Harbor Porpoise

The total population of the Inland Washington stock was estimated to be 10,682 from 2002/2003 surveys. The estimated take (by behavioral harassment only) of an average of 315 individuals per year is small relative to a population of 10,682 (2.9 percent), and is not expected to impact annual rates of recruitment or survival of the stock. Harbor porpoises are not listed under the ESA nor considered depleted under the MMPA.

Dall's Porpoise

The total population of the California/Oregon/Washington stock is estimated at about 42,000 individuals, based on coastal surveys from 2005/2008. The PBR for this stock is 257 animals. The estimated take (by behavioral harassment only) of an average of 70 individuals per year is small relative to a population of 42,000 (0.2 percent), and is not expected to impact annual rates of recruitment or survival of the stock. Dall's porpoises are not listed under the ESA nor considered depleted under the MMPA.

Killer Whale

The total population of the Eastern North Pacific Southern Resident stock is estimated at 86 individuals. The PBR for this stock is 0.17 animals per year. The estimated take (by behavioral harassment only) of 16 animals per year is small relative to the a population of 86 (19 percent), and is not expected to impact annual rates of recruitment or survival of the stock. This is the maximum number of animals that would be exposed to elevated levels of sound per year and the proposed mitigation measures (e.g., marine mammal exclusion zone) would limit the number of exposures. The Eastern North Pacific Southern Resident stock of killer whales is listed as endangered under the ESA and considered depleted under the MMPA.

The total population of the Eastern North Pacific transient stock is estimated to be a minimum of 346 individuals. The PBR for this stock is 2.8 animals per year. The estimated take (by behavioral harassment only) of an average of 24 animals per year is small relative to a population of 346 (6.9 percent), and is not expected to impact annual rates of recruitment or survival of the stock. This stock of transient killer whales is not listed under the ESA nor considered depleted under the MMPA.

Gray Whale

The total population of the Eastern North Pacific stock is estimated at about 18,000 individuals. The PBR for this stock is 360 animals. The estimated take (by behavioral harassment only) of an average of eight animals per year is small relative to a population of 18,000 (<0.1 percent), and is not expected to impact annual rates of recruitment or survival of the stock. Gray whales are not listed under the ESA nor considered depleted under the MMPA.

Humpback Whale

The total population of the California/Oregon/Washington stock is estimated at about 2,043 individuals. The PBR for this stock is 11.3 animals per year. The estimated take (by behavioral harassment only) of an average of four animals per year is small relative to a population of 2,043 (0.2 percent), and is not expected to impact annual rates of recruitment or survival of the stock. Humpback whales are listed as endangered under the ESA and considered depleted under the MMPA.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that SDOT's proposed activities would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from SDOT's proposed activities would have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Historically, Pacific Northwest treaty Indian tribes were known to utilize several species of marine mammals including, but not limited to: harbor seals, Steller sea lions, northern fur seals, gray whales, and humpback whales. More recently, several Pacific Northwest treaty Indian tribes have

promulgated tribal regulations allowing tribal members to exercise treaty rights for subsistence harvest of harbor seals and California sea lions (Caretta *et al.* 2007). The Makah Indian Tribe (Makah) has specifically passed hunting regulations for gray whales, however, the directed take of marine mammals (not just gray whales) for ceremonial and/or subsistence purposes was enjoined by the Ninth Circuit Court of Appeals in a ruling against the Makah in 2002, 2003, and 2004 (NMFS, 2007). The issues surrounding the Makah gray whale hunt (in addition to the hunt for marine mammals in general) is currently in litigation or not yet clarified in recent court decisions. These issues also require National Environmental Policy Act (NEPA) and MMPA compliance, which has not yet been completed. Presently, there are no known active ceremonial and/or subsistence hunts for marine mammals in Puget Sound or the San Juan Islands with the following exceptions: (1) Tribes along the Pacific coast are most likely to still have regulations in place allowing a small number of directed take for subsistence purposes. It is unlikely that those regulations have been exercised in recent years, but they are likely still on the books. The Pacific Coast is separated by land and water bodies from the study area; and (2) Many tribes in Puget Sound and along the Pacific Coast have an additional current regulation that allows their fishermen to protect their life, gear, and catch from seals and California sea lions by lethal means. These rare takes are reported annually to NMFS by each tribe.

There have been only a few reported takes of harbor seals from directed tribal subsistence hunts (Caretta *et al.* 2007). It is possible that a few seals have been taken in directed hunts because tribal fishers use seals caught incidental to fishing operations in the northern Washington marine set gillnet and Washington Puget Sound Region treaty salmon gillnet fisheries for their subsistence needs before undertaking a ceremonial or subsistence hunt (Caretta *et al.* 2007). From communications with the tribes, the NMFS Northwest Regional Office believes that zero to five harbor seals from this stock (the Washington Inland Waters stock) may be taken annually in Puget Sound-directed subsistence harvests (Caretta *et al.* 2007). The location of the hunted animals or hunting areas is not currently known.

NMFS has determined that the total taking of affected species or stocks from the proposed Elliott Bay Seawall project would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Steller sea lions are listed as threatened under the ESA. However, the eastern DPS was proposed for removal from listing under the ESA on April 18, 2012 (77 FR 23209), based on observed annual rates of increase. The public comment period was open through June 18, 2012, and NMFS has not yet made a final decision. The Eastern North Pacific Southern resident stock of killer whales and humpback whales are listed as endangered under the ESA. SDOT has initiated section 7 consultation with NMFS Northwest Regional Office, and NMFS Office of Protected Resources, Permits and Conservation Division will also consult internally on the proposed project. This consultation will be concluded prior to the promulgation of final regulations (if issued).

National Environmental Policy Act (NEPA)

The Army Corps of Engineers is preparing an Environmental Assessment (EA) for the regulatory permit (section 404/10) required for Elliott Bay Seawall project. NMFS may adopt the Army Corps of Engineers' EA if it meets our needs. Otherwise NMFS will write our own EA to analyze the potential environmental effects of our proposed action of issuing an incidental take authorization. This will be concluded prior to our determination on the promulgation of final regulations.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the content of the proposed regulations to govern the taking described herein (see **ADDRESSES**).

Classification

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The SBA defines small entity as a small business, small organization, or a small governmental jurisdiction. Applying this definition, there are no small entities that are impacted by this proposed rule. This proposed rule impacts only the activities of SDOT and the City of Seattle, who have submitted a request for authorization to take marine mammals incidental to construction within Elliott Bay, over the course of 5 years. SDOT and the City of Seattle are not considered to be small governmental jurisdictions under the RFA's definition. Under the RFA, governmental jurisdictions are considered to be small if they are ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the **Federal Register**.'' Because this proposed rule impacts only the activities of SDOT, which is not considered to be a small entity within SBA's definition, the Chief Counsel for Regulation certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. As a result of this certification, a regulatory flexibility analysis is not required and none has been prepared.

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 (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS and the OMB Desk Officer (see **ADDRESSES**).

List of Subjects in 50 CFR Part 217

Imports, Marine mammals, Reporting and recordkeeping requirements.

Dated: April 4, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq.

■ 2. Subpart W is added to part 217 to read as follows:

Subpart W—Taking and Importing Marine Mammals; Elliott Bay Seawall Project

Sec.

217.220 Specified activity and specified geographical region.
217.221 [Reserved].
217.222 Permissible methods of taking.
217.223 Prohibitions.
217.224 Mitigation.
217.225 Requirements for monitoring and reporting.
217.226 Letters of Authorization.
217.227 Renewals and Modifications of Letters of Authorization.

Subpart W—Taking of Marine Mammals Incidental to the Elliott Bay Seawall Project

§ 217.220 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the Elliott Bay Seawall project and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to seawall construction associated with the Elliott Bay Seawall project.

(b) The taking of marine mammals by the Seattle Department of Transportation (SDOT) and the City of Seattle (City) may be authorized in a Letter of Authorization (LOA) only if it occurs in Elliott Bay, Washington.

§ 217.221 [Reserved]

§ 217.222 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 and 217.226 of this chapter, the Holder of the LOA (hereinafter ''SDOT'' and ''City'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.220(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 217.220(a) is limited to the indicated number of Level B harassment takes of the following species/stocks:

(1) Harbor seal (*Phoca vitulina*)—3,200 (an average of 640 animals per year)

(2) California sea lion (*Zalophus californianus*)—3,200 (an average of 640 animals per year)

(3) Steller sea lion (*Eumetopias jubatus*)—800 (an average of 160 animals per year)

(4) Harbor porpoise (*Phocoena phocoena*)—871 (an average of 175 animals per year)

(5) Dall's porpoise (*Phocoenoides dalli*)—195 (an average of 39 animals per year)

(6) Killer whale (*Orcinus orca*), Eastern North Pacific Southern resident—80 (a maximum of 16 animals per year)

(7) Killer whale (*Orcinus orca*), Eastern North Pacific transient—120 (an average of of 24 animals per year)

(8) Gray whale (*Eschrichtius robustus*)—40 (an average of 8 animals per year)

(9) Humpback whale (*Megaptera novaeangliae*)—20 (an average of 4 animals per year)

§ 217.223 Prohibitions.

Notwithstanding takings contemplated in § 217.222(b) and authorized by an LOA issued under § 216.106 and § 217.226 of this chapter, no person in connection with the activities described in § 217.220 may:

(a) Take any marine mammal not specified in § 217.222(b);

(b) Take any marine mammal specified in § 217.222(b) other than by incidental, unintentional Level B harassment;

(c) Take a marine mammal specified in § 217.222(b) if NMFS determines such taking results in more than a negligible impact on the species or stock of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under § 216.106 and § 217.226 of this chapter.

§ 217.224 Mitigation.

(a) When conducting the activities identified in § 217.220(a), the mitigation measures contained in the LOA issued under § 216.106 and § 217.226 of this chapter must be implemented. These mitigation measures include:

(1) *Limited impact pile driving.* (i) All sheet piles shall be installed using a vibratory driver, unless impact driving is required to install piles that encounter consolidated sediments or for proofing load bearing sections.

(ii) Any impact driver used in conjunction with vibratory pile driving shall employ sound attenuation devices, where applicable.

(iii) Any attenuation devices that become available for vibratory pile driving shall be considered for additional mitigation.

(2) *Containment of impact pile driving.* (i) The majority of permanent concrete piles shall be driven behind the temporary containment wall.

(ii) [Reserved]

(3) *Additional attenuation measures.* (i) Other attenuation devices shall be used as necessary to reduce sound levels.

(ii) In the event that underwater sound monitoring shows that noise generation from pile installation exceeds the levels originally expected, SDOT and the City shall notify NMFS immediately to reevaluate the implementation of additional attenuation devices or other mitigation measures.

(4) *Ramp-up.* (i) Ramp-up shall be used at the beginning of each day's in-water pile-related activities or if pile driving has ceased for more than 1 hour.

(ii) If a vibratory hammer is used, contractors shall initiate sound from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. This procedure shall be repeated two additional times before full energy may be achieved.

(iii) If a non-diesel impact hammer is used, contractors shall provide an initial set of strikes from the impact hammer at reduced energy, followed by a 1-minute waiting period, then two subsequent sets.

(5) *Marine mammal exclusion zones.* (i) Exclusion zones shall be established to prevent the Level A harassment of all marine mammals and to reduce the Level B harassment of large whales.

(A) An exclusion zone for pinnipeds and small cetaceans shall be established with a radius of 200 feet (61 meters) waterward of each steel sheet pile during impact pile driving;

(B) An exclusion zone for pinnipeds and small cetaceans shall be established with a radius of 50 feet (15 meters) waterward of each concrete pile during impact pile driving;

(C) An exclusion zone for large whales shall be established with a radius of 3,280 feet (1,000 meters) waterward of each steel sheet or concrete pile during impact pile driving;

(D) An exclusion zone for large whales shall be established with a radius of 2.5 miles (3,981 meters)

waterward of each steel sheet pile during vibratory pile driving.

(ii) Temporary buoys shall be used, as feasible, to mark the distance to each exclusion zone during in-water pile-related activities.

(iii) The exclusion zones shall be used to provide a physical threshold for the shutdown of in-water pile-related activities.

(iv) At the start of in-water pile related activities each day, a minimum of one qualified protected species observer shall be staged on land (or an adjacent pier) near the location of in-water pile-related activities to document and report any marine mammal that approaches or enters an exclusion zone throughout the day.

(v) Additional land-based observers shall be deployed if needed to ensure the construction area is adequately monitored.

(vi) Observers shall monitor for the presence of marine mammals 30 minutes before, during, and for 30 minutes after any in-water pile-related activities.

(vii) Exclusion zones shall not be obscured by fog or poor lighting conditions during in-water pile-related activities.

(6) *Shutdown and delay procedures.* (i) If a marine mammal is seen approaching or entering an exclusion zone (as specified in § 217.224(5)(i)), observers would immediately notify the construction personnel operating the pile-related equipment to shutdown pile-related activities.

(ii) If a marine mammal(s) is present within the applicable exclusion zone prior to in-water pile-related activities, pile driving/removal shall be delayed until the animal(s) has left the exclusion zone or until 15 minutes have elapsed without observing the animal.

(7) *Additional mitigation measures.* Additional mitigation measures as contained in an LOA issued under § 216.106 and § 217.226 of this chapter.

§ 217.225 Requirements for monitoring and reporting.

(a) When conducting the activities identified in § 217.220(a), the monitoring and reporting measures contained in the LOA issued under § 216.106 and § 217.226 of this chapter must be implemented. These measures include:

(1) *Visual monitoring.* (i) In addition to the mitigation monitoring described in § 217.224 of this chapter, at least two protected species observers shall be positioned on land near the 2.5 mile exclusion zone to monitor for marine mammals during vibratory pile-related activities or any other construction activities that may pose a threat to marine mammals.

(A) Observers shall use the naked eye, wide-angle binoculars with reticles, and any other necessary equipment to scan the Level B harassment isopleth.

(B) Observers shall work, on average, eight hours per day and shall be relieved by a fresh observer if pile driving lasts longer than usual (i.e., 12–16 hours).

(C) The number of observers shall be increased and/or positions changed to ensure full visibility of the Level B harassment isopleth.

(D) Land-based visual monitoring shall be conducted during all days of vibratory pile driving.

(E) All land-based monitoring shall begin at least 30 minutes prior to the start of in-water pile-related activities and continue during active construction.

(ii) At a minimum, observers shall record the following information:

(A) Date of observation period, monitoring type (land-based/boat-based), observer name and location, climate and weather conditions, and tidal conditions;

(B) Environmental conditions that could confound marine mammal detections and when/where they occurred;

(C) For each marine mammal sighting, the time of initial sighting and duration to the end of the sighting period;

(D) Observed species, number, group composition, distance to pile-related activities, and behavior of animals throughout the sighting;

(E) Discrete behavioral reactions, if apparent;

(F) Initial and final sighting locations marked on a grid map;

(G) Pile-related activities taking place during each sighting and if/why a shutdown was or was not triggered; and

(H) The number of takes (by species) of marine mammals, their locations, and behavior.

(2) *Acoustic monitoring.* (i) Acoustic monitoring shall be conducted during in-water pile-related activities to identify or confirm noise levels for pile-related activities during in-water construction.

(A) Acoustic data shall be collected using hydrophones connected to a drifting boat to reduce the effect of flow noise and an airborne microphone. There shall be a direct line of acoustic transmission through the water column between the pile and the hydrophones in all cases, without any interposing structures, including other piles.

(B) A stationary two-channel hydrophone recording system shall be deployed to record a representative sample (subset of piles) during the monitoring period. Acoustic data shall be collected 1 m below the water surface and 1 m above the sea floor.

(ii) Background noise recordings (in the absence of pile driving) shall be collected to provide a baseline background noise profile. The results and conclusions of the study shall be summarized and presented to NMFS with recommendations for any modifications to the monitoring plan or exclusion zones.

(iii) All sensors, signal conditioning equipment, and sampling equipment shall be calibrated at the start of the monitoring period and rechecked at the start of each day.

(iv) Prior to monitoring, water depth measurements shall be taken to ensure that hydrophones do not drag on the bottom during tidal changes.

(v) Underwater and airborne acoustic monitoring shall occur for the first five steel sheet pile and the first five concrete piles during the duration of pile driving. If a representative sample has not been achieved after the five piles have been monitored (e.g., if there is high variability of sound levels between pilings), acoustic monitoring shall continue until a representative acoustic sample has been collected.

(vi) Acoustic data shall be downloaded periodically (i.e., daily or on another appropriate schedule) and analyzed following the first year of construction. Post-analysis of underwater sound level signals shall include the following:

(A) RMS values (average, standard deviation/error, minimum, and maximum) for each recorded pile. The 10-second RMS averaged values will be used for determining the source value and extent of the 120 dB underwater isopleth;

(B) Frequency spectra for each functional hearing group; and

(C) Standardized underwater source levels to a reference distance of 10 m (33 ft).

(vii) Post-analysis of airborne noise would be presented in an unweighted format and include:

(A) The unweighted RMS values (average, minimum, and maximum) for each recorded pile. The average values would be used for determining the extent of the airborne isopleths relative to species-specific criteria;

(B) Frequency spectra from 10 Hz to 20 kHz for representative pile-related activity; and

(C) Standardized airborne source levels to a reference distance of approximately 15 m (50 ft).

(viii) In the event noise levels surpass estimated levels for extended periods of

time, construction shall be stopped and NMFS shall be contacted to discuss the cause and potential solutions.

(3) *General reporting.* (i) All marine mammal sightings shall be documented by observers on a NMFS-approved sighting form. Takes of marine mammals shall be recorded for any individual present within the area of potential effects.

(ii) Marine mammal reporting shall include all data described previously under Proposed Monitoring, including observation dates, times, and conditions, and any correlations of observed marine mammal behavior with activity type and received levels of sound, to the extent possible.

(iii) A report with the results of all acoustic monitoring shall include the following:

(A) Size and type of piles;

(B) A detailed description of any sound attenuation device used, including design specifications;

(C) The impact hammer energy rating used to drive the piles, make and model of the hammer(s), and description of the vibratory hammer;

(D) A description of the sound monitoring equipment;

(E) The distance between hydrophones and depth of water and the hydrophone locations;

(F) The depth of the hydrophones;

(G) The distance from the pile to the water's edge;

(H) The depth of water in which the pile was driven;

(I) The depth into the substrate that the pile was driven;

(J) The physical characteristics of the bottom substrate into which the pile were driven;

(K) The total number of strikes to drive each pile;

(L) The results of the hydroacoustic monitoring, including the frequency spectrum, ranges and means for the peak and RMS sound pressure levels, and an estimation of the distance at which RMS values reach the relevant marine mammal thresholds and background sound levels.

(M) Vibratory driving results would include the maximum and overall average RMS calculated from 30-s RMS values during the drive of the pile; and

(N) A description of any observable marine mammal behavior in the immediate area and, if possible, correlation to underwater sound levels occurring at that time.

(iv) An annual report on monitoring and mitigation shall be submitted to NMFS, Office of Protected Resources, and NMFS, Northwest Regional Office.

(A) The annual reports shall summarize include data collected for each marine mammal species observed in the project area, including descriptions of marine mammal behavior, overall numbers of individuals observed, frequency of observation, any behavioral changes and the context of the changes relative to activities would also be included in the annual reports, date and time of marine mammal detections, weather conditions, species identification, approximate distance from the source, and activity at the construction site when a marine mammal is sighted.

(v) A draft comprehensive report on monitoring and mitigation shall be submitted to NMFS, Office of Protected Resources, and NMFS, Northwest Regional Office, 180 days prior to the expiration of the regulations.

(A) The comprehensive technical report shall provide full documentation of methods, results, and interpretation of all monitoring during the first 4.5 years of the regulations. A revised final comprehensive technical report, including all monitoring results during the entire period of the regulations, shall be due 90 days after the end of the period of effectiveness of the regulations.

(B) [Reserved]

(4) *Reporting injured or dead marine mammals.* (i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by an LOA (if issued), such as an injury (Level A harassment), serious injury, or mortality, the Holder shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinator. The report must include the following information:

(A) Time and date of the incident;

(B) Description of the incident;

(C) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(D) Description of all marine mammal observations in the 24 hours preceding the incident;

(E) Species identification or description of the animal(s) involved;

(F) Fate of the animal(s); and

(G) Photographs or video footage of the animal(s).

(ii) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the Holder to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Holder may not resume their activities until notified by NMFS.

(iii) In the event that the Holder discovers an injured or dead marine mammal, and the lead protected species observer determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), the Holder shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinator. The report must include the same information identified in § 217.225(a)(3) of this chapter. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the Holder to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iv) In the event that the Holder discovers an injured or dead marine mammals, and the lead protected species observer determines that the injury or death is not associated with or related to the activities authorized in the LOA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Holder shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinator, within 24 hours of the discovery. The Holder shall provide photographs or video footage or other documentation of the stranding animal sighting to NMFS.

(b) [Reserved]

§ 217.226 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the applicant must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, the Holder must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Holder must apply for and obtain a modification of the LOA as described in § 217.227.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (i.e., mitigation) on the species, its habitat,

and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.227 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 and 217.226 of this chapter for the activity identified in § 217.220(a) of this chapter shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 217.227(c)(1)), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 217.227(c)(1)) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis illustrating the change, and solicit public comments before issuing the LOA.

(c) An LOA issued under §§ 216.106 and 217.226 of this chapter for the activity identified in § 217.220(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Holder regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include the following:

(A) Results from the Holder's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies;

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comments.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.222(b), an LOA may be modified without prior notice or opportunity for public comment. A notice would be published in the **Federal Register** within 30 days of the action.

[FR Doc. 2013–08390 Filed 4–11–13; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 60
Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2010–0505, FRL–9791–9]

RIN 2060–AR75

Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: On August 16, 2012, the EPA published final new source performance standards for the oil and natural gas sector. The Administrator received petitions for reconsideration of certain aspects of the standards. In this notice, the EPA is announcing proposed amendments as a result of reconsideration of certain issues related to implementation of storage vessel provisions. The proposed amendments also correct technical errors that were inadvertently included in the final rule.

DATES: *Comments.* Comments must be received on or before May 13, 2013, unless a public hearing is requested by April 17, 2013. If a hearing is requested on this proposed rule, written comments must be received by May 28, 2013.

Public Hearing. If anyone contacts the EPA requesting a public hearing by April 17, 2013 we will hold a public hearing on April 29, 2013.

Public Hearing. If a public hearing is requested by April 17, 2013, it will be held on April 29, 2013 at the EPA's Research Triangle Park Campus, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. The hearing will convene at 10:00 a.m. (Eastern Standard Time) and end at 5:00 p.m. (Eastern Standard Time). A lunch break will be held from 12:00 p.m. (Eastern Standard Time) until 1:00 p.m. (Eastern Standard Time). Please contact Joan C. Rogers at (919) 541–4487, or at *rogers.joanc@epa.gov* to request a hearing, to determine if a hearing will be held and to register to speak at the hearing, if one is held. If a hearing is requested, the last day to pre-register in advance to speak at the hearing will be April 25, 2013. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. If you require the service of a translator or special accommodations such as audio description, please let us know at the time of registration. If no one contacts the EPA requesting a public hearing to be held concerning this proposed rule by April 17, 2013, a public hearing will not take place.

If a hearing is held, it will provide interested parties the opportunity to present data, views or arguments concerning the proposed action. The EPA will make every effort to accommodate all speakers who arrive and register. Because this hearing, if held, will be at a U.S. governmental facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons. The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. If a hearing is held on April 29, 2013, written comments on the proposed rule must be postmarked by May 28, 2013. Commenters should notify Ms. Rogers if they will need specific equipment, or if there are other special needs related to providing comments at the hearing. The EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email or CD) or in hard copy form. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Information regarding the hearing (including information as to whether or not one will be held) will be available at: *http://www.epa.gov/airquality/oilandgas/actions.html.* Again, all requests for a public hearing to be held must be received by April 17, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2010–0505, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email:* Comments may be sent by electronic mail (email) to *a-and-r-docket@epa.gov,* Attention Docket ID Number EPA–HQ–OAR–2010–0505.
- *Fax:* Fax your comments to: (202) 566–1741, Attention Docket ID Number EPA–HQ–OAR–2010–0505.
- *Mail:* Send your comments on this action to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Docket ID Number EPA–HQ–OAR–2010–0505. Please include a total of two copies. The EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery or Courier*: Deliver your comments to: EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Please include a total of two copies. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: All submissions must include agency name and respective docket number or Regulatory Information Number (RIN) for this rulemaking. All comments will be posted without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA's Docket Center, Public Reading Room, EPA West Building, Room Number 3334, 1301 Constitution Avenue NW., Washington, DC 20004. This Docket Facility 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, Sector Policies and Programs Division (E143–05), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5460; facsimile number: (919) 541–3470; email address: *moore.bruce@epa.gov.*

SUPPLEMENTARY INFORMATION: *Outline.* The information presented in this preamble is organized as follows:

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I. Preamble Acronyms and Abbreviations

Several acronyms and terms are included in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

API American Petroleum Institute
BOE Barrels of Oil Equivalent
bbl Barrel
bpd Barrels Per Day
BID Background Information Document
BSER Best System of Emissions Reduction
CAA Clean Air Act
CFR Code of Federal Regulations
CPMS Continuous Parametric Monitoring Systems
EIA Energy Information Administration
EPA Environmental Protection Agency
GOR Gas to Oil Ratio
HAP Hazardous Air Pollutant
HPDI HPDI, LLC
Mcf Thousand Cubic Feet
NTTAA National Technology Transfer and Advancement Act of 1995
NEI National Emissions Inventory
NEMS National Energy Modeling System
NESHAP National Emissions Standards for Hazardous Air Pollutants
NSPS New Source Performance Standards
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
OVA Olfactory, Visual and Auditory
PRA Paperwork Reduction Act
PTE Potential to Emit
RFA Regulatory Flexibility Act
SISNOSE Significant Economic Impact on a Substantial Number of Small Entities
tpy Tons per Year
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
VCS Voluntary Consensus Standards
VOC Volatile Organic Compounds
VRU Vapor Recovery Unit

II. General Information

A. Does this reconsideration notice apply to me?

Categories and entities potentially affected by today's notice include:

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS ACTION

Category	NAICS Code [1]	Examples of regulated entities
Industry	211111	Crude Petroleum and Natural Gas Extraction.
	211112	Natural Gas Liquid Extraction.
	221210	Natural Gas Distribution.
	486110	Pipeline Distribution of Crude Oil.
	486210	Pipeline Transportation of Natural Gas.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather is meant to provide a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative as listed in 40 CFR 60.4 or 40 CFR 63.13 (General Provisions).

B. What should I consider as I prepare my comments to the EPA?

We seek comment only on the aspects of the final new source performance standards for the oil and natural gas sector specifically identified in this notice. We are not opening for reconsideration any other provisions of the new source performance standards at this time.

Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention: Docket ID Number EPA–HQ–OAR–2010–0505. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. How do I obtain a copy of this document and other related information?

In addition to being available in the docket, electronic copies of these proposed rules will be available on the Worldwide Web through the TTN. Following signature, a copy of each proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

III. Background

The Administrator signed the Oil and Natural Gas Sector NSPS (40 CFR part 60 subpart OOOO) on April 17, 2012, and the final rule was published in the **Federal Register** at 77 FR 49490, August 16, 2012. Following promulgation of the final rule, the Administrator received petitions for reconsideration of several provisions of the NSPS pursuant to CAA section 307(d)(7)(B). Copies of the petitions are provided in rulemaking docket EPA–HQ–OAR–2010–0505.

IV. Today's Action

Today, we are granting reconsideration of, proposing and requesting comment on the following limited set of issues raised in the petitions described above: (1) Implementation date for the storage vessel provisions; (2) definition of ''storage vessel''; (3) definition of ''storage vessel affected facility'' for applicability purposes; (4) requirements for storage vessels constructed, modified or reconstructed during the period from the NSPS proposal date, August 23, 2011, to April 12, 2013; (5) an alternative mass-based standard for storage vessels after extended periods of low uncontrolled emissions; (6) compliance demonstration and monitoring provisions for closed-vent systems and control devices for storage vessels; (7) revised and clarified protocol for manufacturer testing of enclosed combustors; (8) broadening of the provision for determining VOC emissions and installing controls from only those affected storage vessels in certain locations to all affected storage vessels regardless of location; and (9) time period allowed for submittal of annual reports and compliance certifications. Finally, we are proposing to correct technical errors that were inadvertently included in the final rule.

This notice is limited to the specific issues identified in this notice. We will not respond to any comments addressing any other provisions of the oil and natural gas sector NSPS. We will address other issues for which we intend to grant reconsideration at a later time.

The impacts of today's proposed revisions on the costs and the benefits of the final rule are minor but cost-saving. We expect that affected facility owners and operators will install and operate the same or similar control technologies to meet the proposed revised standards in this notice as they would have chosen to comply with the standards in the August 2012 final rule, and revisions to the rule will not significantly increase emissions.

V. Executive Summary

The purpose of this action is to propose amendments to 40 CFR part 60, subpart OOOO, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution. This proposal was developed to address certain issues primarily related to implementation of storage vessel provisions that have been raised by different stakeholders through several administrative petitions for reconsideration of the 2012 NSPS. The EPA is proposing to amend the NSPS to address these issues.

Information the EPA had during development of the final rule led to underestimation of the number of affected storage vessels. In response to information presented in some of the petitions for reconsideration, we have revised the estimated number of storage vessels subject to, and impacted by, the final NSPS. Based on the increased number of storage vessels we now estimate will be impacted by the proposed rule, it is clear that more time will be needed for a sufficient number of control devices to become available for the impacted storage vessels.

Based on our analysis and the information provided to us, we believe that there are on the order of 970 storage vessels per month being installed at this time and expected in the future, and over 20,000 affected storage vessels constructed, modified or reconstructed between the August 23, 2011, proposal date of the NSPS and April 12, 2013. For ease of reference in this notice, we refer to affected storage vessels constructed, modified or reconstructed between the August 23, 2011, proposal date of the NSPS and April 12, 2013 as ''Group 1'' and the cohort of storage vessels constructed, modified or reconstructed after April 12, 2013 as ''Group 2.'' Further, based on information available to us, there will not be a sufficient supply of control devices until 2016. To avoid postponing control for all affected storage vessels until 2016, we are proposing alternative measures for Group 1 affected sources, because many of these sources will likely have experienced significant emissions decline during this period. For Group 2 affected sources, we are proposing an April 15, 2014, compliance date for implementing the control requirements. For Group 1, instead of installation of a control device by April 15, 2014, we are proposing to require initial notification by October 15, 2013, to inform regulatory agencies of the existence and location of the vessels. We are also proposing that affected storage vessels in Group 1 that undergo an event after April 12, 2013 that leads to an increase in emissions, even without a physical change or change in the method of operation, implement the same control requirements as Group 2.

For storage vessels that have installed controls to meet the 95 percent VOC reduction standard, we are proposing streamlined compliance monitoring provisions that would be in place during our reconsideration of certain

issues raised in the reconsideration petitions relative to the current compliance demonstration and monitoring requirements. We are proposing these streamlined provisions to provide assurance of compliance during the reconsideration period, while allowing the EPA time to consider fully the issues raised by petitioners concerning initial and continuous compliance provisions of the final NSPS. These compliance monitoring provisions include inspections performed at least monthly of covers, closed-vent systems and control devices. These procedures were selected to provide frequent checks that will lead to prompt repairs, to be performed by personnel already at the site and would require little or no specialized compliance monitoring training or equipment.

We are also proposing that the storage vessel standards include a sustained uncontrolled VOC emission rate of less than 4 tpy as an alternative emission limit to the 95 percent control in the final NSPS under specified circumstances. Specifically, the proposed alternative emission limit would be available to those who can demonstrate, based on records for the 12 months immediately preceding the demonstration and while the control is on, that its uncontrolled emissions during that 12 month-period would have been below 4 tpy. More detailed discussion of the less than 4 tpy emission limit is presented in section VI.A.4. We believe this alternate standard reflects the decline in production that all wells experience over time and allows control devices to be reused at other locations, which would help alleviate control device supply shortages. If, however, emissions subsequently increase above the 4 tpy limit, the sources would need to comply with the 95 percent control requirement as discussed in detail in section VI.4.

We are proposing to amend the definition of ''storage vessel'' to clarify that it refers only to vessels containing crude oil, condensate, intermediate hydrocarbon liquids or produced water. We believe this amendment addresses concerns raised by several petitioners that the definition in the final NSPS was overly broad and encompassed a number of unintended vessels, such as fuel tanks.

We are also proposing to amend the definition of ''storage vessel affected facility'' to include the 6 tpy VOC emission threshold. Without this threshold, the affected facility definition could impose unnecessary burden on operators of storage vessels that are not required to reduce emissions. In addition, we are proposing to clarify that a source can take into account any legal and practically enforceable emission limit under federal, state or local authority when determining the VOC emission rate for purposes of this threshold (i.e., they would not be subject to the storage vessel provisions of the NSPS if their potential to emit VOC was required to be less than 6 tpy under such limitation and in fact was).

We are proposing to revise the combustor control device manufacturer test protocol in the NSPS to align it with a similar protocol in the Oil and Natural Gas NESHAP (40 CFR 63, subpart HH). Our intent in the final NSPS was to make the NSPS and NESHAP protocols consistent. In addition, we are soliciting comment on a potential compliance approach based on the use of these manufacturer-tested combustor models. This potential compliance approach takes advantage of an opportunity to reduce the compliance burden on the affected facility. A discussion of this concept as it relates to this rule is presented in section VI.C of this preamble.

We are proposing to clarify that a storage vessel affected facility whose VOC emissions decrease to less than the threshold of 6 tpy would remain an affected facility. We believe this amendment is necessary to clarify that a storage vessel complying with the proposed alternative emission limit of less than 4 tpy would remain an affected facility and would be required to meet the 95 percent reduction standard should its uncontrolled emissions increase to 4 tpy or above in the future.

The final NSPS requires the annual report and compliance certification to be submitted within 30 days after the end of the compliance period. Several petitioners stated that because the annual report requires signature by a responsible official to certify the truth, accuracy and completeness of the report, 30 days is insufficient to compile all the required information and to obtain the signature of a senior company official. Therefore, we are proposing to allow 90 days after the end of the compliance period for submittal of the annual report and compliance certification. We are also proposing to make several clarifications and technical edits to the final NSPS.

In addition to the proposed revisions to the requirements discussed above, we present a discussion in section VI.E concerning the importance of proper design, sizing and operation of storage vessel affected facilities, their closed-vent systems and associated control devices. Improper design or operation of a storage vessel and its control system can result in occurrences where peak flow overwhelms the storage vessel and its capture systems, resulting in emissions that do not reach the control device.

VI. Discussion of Provisions Subject to Reconsideration

As summarized above, the EPA is proposing to address a number of issues that have been raised by different stakeholders through several administrative petitions for reconsideration of the final NSPS. The following sections present the issues raised by the petitioners that the EPA is addressing in this action and how the EPA proposes to resolve the issues. We also provide below a discussion of the EPA's expectations that operators will employ proper design, sizing and operation of storage vessel affected facilities, their closed-vent systems and their associated control devices.

A. Storage Vessels Implementation

1. Emission Standards for Storage Vessels

In their petitions for reconsideration, two petitioners stated that the EPA had significantly underestimated the number of storage vessels subject to and impacted by the NSPS. The petitioners pointed out that the EPA had based its analysis to predict the number of storage vessels that would be subject to and impacted by the final rules on storage vessels that were located at existing low producing wells. They reasoned that storage vessels at low producing wells were likely to have low throughput with corresponding low rates of flash emissions. Petitioners asserted that they estimated the number of affected storage vessels to be approximately 28,000 per year. They stated that, because their estimate was much higher than the 304 storage vessels per year the EPA had estimated, the 1-year phase in for the storage vessel requirements provided in the final rule was insufficient time for an adequate number of control devices to become available to meet demand. The petitioners suggested remedies that could help alleviate the shortage of control devices necessary to control the much greater number of storage vessels than the EPA had estimated: (1) Provide a greater period of time for phase in (i.e., 3 years instead of the 1 year provided in the final rule); and (2) allow removal of control devices after an extended period of low uncontrolled emissions. The first suggestion is addressed below in this section; the second is addressed in section VI.A.4.

In light of petitioners' assertions, we revisited our estimate of the number of

storage vessels subject to the final NSPS. Our existing estimate was based on information reported in the NEI that had been used to develop the storage vessels provisions of NESHAP subpart HH several years ago. These data, combined with model plant information and modeled using over 100 tank datasets provided as part of API E&P TANKS, were used to develop an estimate of storage vessels expected to have VOC emissions of at least 6 tpy, the applicability threshold for storage vessels in the NSPS final rule.

In our original estimate, we used the throughput distribution of crude oil and condensate storage vessels as reported in the BID for NESHAP subpart HH to estimate the number of storage vessels in each of several throughput categories. This distribution was important because it was directly related to how we estimated VOC emissions from the tanks. We now know that the BID data were highly biased towards lower throughput tanks, which typically have lower emissions. We realize that, because of the high production rates of hydraulically fractured wells (the predominant type of wells today and expected to be the predominant type of wells in the future), the liquid throughput and resulting flash emissions for future storage vessels are much higher than for the storage vessels represented by the BID data. Thus, we now realize that the vast majority of the tanks, according to the BID distribution, were lower throughput tanks with VOC emissions less than 6 tpy, while a much higher number of future storage vessels are expected to have emissions of 6 tpy or more. Further, we now realize that historical trends we have used in the past to project industry growth are not applicable to the oil and natural gas sector going forward. This also contributed to our underestimate of affected storage vessels in the final rule analysis. In summary, the much higher production wells and correspondingly higher storage vessel emissions, combined with the great increase in the number of wells and associated storage vessels, resulted in the number of affected storage vessels to be greatly underestimated.

Based on the information from the petitioners, our re-evaluation of our dataset, and additional information described below, we revised our estimate of the number of storage vessels subject to the final NSPS. We estimated the number of new storage vessels predicted to be installed by assuming that there would be one storage vessel associated with each completed well. We understand that there may be more than one storage vessel associated with each well, but because the majority of VOC emissions from storage vessels occur due to flashing from the first storage vessel after the separator (where the pressure differential between devices is the greatest), other storage vessels would have comparatively lower emissions. Further, if more than one storage vessel does exist at the well site, it is likely that owners and operators would manifold these storage vessels together and route them to a single control device or VRU.

We recognize that an additional source of uncertainty in our revised analysis is that we are not able to estimate the number of wells on multi-well pads. We believe that these multi-well pads would be more likely to take advantage of the proximity of available storage vessel capacity, resulting in more than one well being associated with a storage vessel or group of storage vessels.

For the reasons stated above, we believe that our assumption of one storage vessel per well provides a reasonable basis for estimating the number of affected storage vessels since August 23, 2011, (the date the NSPS was proposed) and for future years. We drew estimates and predictions of the number of completed wells from 2011 to 2015 from the EIA NEMS 2012 forecasting model, a modeling platform consistent with the 2012 Annual Energy Outlook reference case.

To estimate the number of storage vessels that would be associated with wells of various production ranges, we used well-level production information from 2009 contained in the HPDI database to distribute the predicted number of well completions across a range of production rate categories using the same proportions as the 2009 well completion data.

We also made an effort to account for the number of storage vessels that would already be subject to and controlled under state environmental regulations. We analyzed the regulations in the 11 states that represented 95 percent of the total production of crude oil and condensate in the U.S. (according to production information published by the EIA). These states were Alaska, California, Colorado, Kansas, Louisiana, Montana, North Dakota, New Mexico, Oklahoma, Texas and Wyoming. These storage vessels were then subtracted from the overall count of storage vessels that would be subject to the final rule.

As a result, we estimated that there may be as many as 46,000 new condensate and crude oil storage vessels installed that would be subject to the NSPS from August 23, 2011 (the date upon which new, modified or reconstructed storage vessels become affected facilities under the NSPS), until October 15, 2015. This is an average of approximately 11,600 storage vessels per year, or about 970 per month. By the current compliance date of October 15, 2013, over 20,000 storage vessels will have come online since the original proposal date. These units will need to be controlled by October 15, 2013, under the current final NSPS.

Based on our reanalysis, we have reason to believe that there was already significant demand for storage vessel emissions control devices prior to the 2012 NSPS. For example, as discussed above, several states require operators to control VOC emissions from storage vessels. The EPA received information from the oil and natural gas industry indicating that 3,680 control devices could be manufactured per year as of 2012, or about 300 per month. We assumed that, since the NSPS requirements were not yet finalized when the agency received this information, most of this supply of equipment was being purchased by operators needing to meet state requirements. The 300 control devices per month discussed above will not be sufficient to satisfy NSPS requirements.

We further believe the supply of combustors will lag demand. Due to their uncertainty, manufacturers will delay scaling-up production until they are confident of the requirements of the manufacturer test protocol, for which we are proposing certain revisions and clarifications in this action and intend to finalize later this year. Manufacturers also need to make sure their models will pass the test and will undergo a favorable review by the EPA before investing in scale-up of operations. The manufacturer test protocol is discussed in section VI.C below.

The information available to the EPA leads us to conclude that, even with the uncertainty described above, the control device industry will be able to ramp up production each month by about 100 units over the previous month, beginning now, with our proposed revisions to the manufacturer test protocol, to a production capacity of about 1,400 per month, or about 17,000 per year, by April 15, 2014. With these projections in mind, it is clear that there will be an insufficient number of control devices on the market to meet the demand for control devices by the current compliance date of October 15, 2013, in addition to the ongoing demand for control devices from units that become affected after October 15, 2013. In fact, given these projections, it

is unlikely that supply of control devices will meet existing and new demand until 2016.

We are concerned about delaying control of all storage vessels affected facilities until 2016. In order to move the compliance date to earlier than 2016, and in an attempt to match supply and demand in the most efficient and environmentally protective manner, we are considering that the BSER constitutes measures other than immediate control for those that have come online to date (i.e., Group 1). Specifically, we are proposing a two-part requirement: (1) These sources provide initial notification to the EPA by October 15, 2013; and (2) for any of these storage vessels that experiences an event on or after April 12, 2013, that potentially results in emissions increasing, the owner or operator would be subject to the same control requirements as those in Group 2.

The proposed approach not only would avoid delaying controlling all units until 2016, it would also help to some degree with proper allocation of the limited supplies of control devices in the near future and would ensure that those devices are used at the vessels expected to have the most significant emissions. As discussed in section VI.A.4 below, all oil and natural gas wells decline in production over time, with corresponding declines in reservoir pressure and liquids production. Often these declines are relatively rapid and can occur over a year or two. Accordingly, emissions from storage vessels in Group 1 may have declined significantly (potentially below the 6 tpy threshold for some) by the time controls are available to all affected sources. We recognize, however, that the emissions of these Group 1 affected facilities could increase again due to an event leading to higher emissions (e.g., if an additional well comes online feeding the vessel or a well feeding the storage vessel is later refractured or otherwise stimulated leading to an increase in production). We are therefore proposing that, if such an increase occurs, the Group 1 sources comply with control requirements that apply to Group 2.

Based upon the projected buildup of control device manufacturing capacity (i.e., an increase in production capacity of about 100 units per month, beginning now, to a production capacity of about 1,400 per month, or about 17,000 per year, by April 15, 2014) and, if control is not required initially for Group 1, the EPA expects that by April 15, 2014, there will be sufficient supply of equipment for Group 2. Accordingly, we are proposing that Group 2 implement the control requirements by April 15, 2014, or 60 days after startup, whichever is later. Additionally, the EPA believes manufacturers will be flexible in their ability to meet equipment demand increase in the future if crude oil and natural gas production increases. Because more controls will be applied to storage vessels as a result of this rule, the EPA believes that manufacturers will take advantage of scale economies and produce units at appropriate rates. We believe that the NSPS reconsideration, as proposed, will achieve environmental benefits while minimizing the risks of producers needing to slow activities to obtain appropriate equipment.

In summary, based on the discussion of control supply and demand presented above, we are proposing differing requirements for storage vessels in Group 1 and those in Group 2 in order to ensure that controls are available for new or modified storage vessel as soon as possible after they come online (i.e., when they have higher emissions). Specifically, for Group 2 (i.e., those that are constructed, modified or reconstructed on or after April 12, 2013), we propose to require reduction of emissions by 95 percent no later than 60 days after startup or April 15, 2014, whichever is later. For Group 1 (i.e., those that were constructed, modified or reconstructed after August 23, 2011, and before April 12, 2013, many of which may have experienced decline in emissions, we are proposing a two-part requirement as reflecting BSER: (1) These sources provide initial notification to the EPA by October 15, 2013; and (2) for any of these storage vessels that experience an event on or after April 12, 2013 that results in emissions increasing, the owner or operator would be subject to the same control requirements as those in Group 2 and would have to control emissions no later than 60 days after the event or April 15, 2014, whichever is later. Until any such emissions increase, there would be no further requirements for Group 1 storage vessels. We have included above in the preamble and in the proposed regulatory text some examples of events that would potentially lead to emission increase. We solicit comment on other examples or suggestions on how to define these events in the rule.

Further, we realize that the events discussed above that would likely lead to emissions increases are planned events. Operators of Group 1 storage vessels who plan for routing of additional wells to a storage vessel, fracturing or refracturing of a well feeding a storage vessel or other events are fully aware of such an event before it occurs. Therefore, we solicit comment on whether Group 1 storage vessels with increased emissions following such an event need the full 60 days provided for operators to apply controls.

We believe, based on our analysis of control supply and demand discussed above, that sufficient supply of controls will be available for Group 2 storage vessels by April 15, 2014. As a result, we propose that the BSER for these Group 2 storage vessels would require reduction of emissions by 95 percent no later than 60 days after date of construction, modification or reconstruction or April 15, 2014, whichever is later.

However, we are concerned with leaving affected sources with high emissions uncontrolled prior to April 15, 2014, and certain Group 1 units after that date. One option is to require control for those with emissions above a certain level based on the number of available control devices during this period. However, we have insufficient information regarding the number of high throughput (and likely to have higher VOC emissions) storage vessels. Therefore, we are unable to identify an appropriate threshold higher than 6 tpy that would allow us to require control of higher emission storage vessels earlier. We are also concerned that this may impact the ability of other affected sources to acquire control devices and comply by April 15, 2014. We solicit information on the number of storage vessels at different throughput levels (or VOC emission levels) to further inform our consideration of controlling higher emitting storage vessels earlier than April 15, 2014.

2. Definition of ''Storage Vessel''

In the final rule (77 FR 49490), the EPA defined ''storage vessel,'' in relevant part, as ''a unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provides structural support and is designed to contain an accumulation of liquids or other materials.'' Several petitioners took issue with this definition and expressed particular concern that the storage vessel definition in the final rule inadvertently included nearly every container in the oil and gas production, natural gas processing, and natural gas transmission and storage segments. For example, one petitioner stated that the definition as written could potentially encompass a drinking water bottle. The petitioner stated further that while the drinking water bottle would not exceed the 6 tpy VOC potential emissions threshold, which was provided

elsewhere in the final rule, each site would have to maintain documentation on each and every container on-site to prove that the potential VOC emissions were less than 6 tpy.

We agree that the current definition is unclear and propose to amend the definition of ''storage vessel'' in § 60.5430 of the final rule to read, in relevant part, ''a tank or other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids or produced water and that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support.''

The proposed amended definition now specifically calls out the type of materials that must be stored in the vessel to meet the definition, thereby clarifying the scope of storage vessels the EPA intended to cover under the NSPS. The proposed definition reflects the EPA's intent, as discussed in the original rulemaking. For example, in the discussion of our storage tank analysis in the preamble to the proposed rule, we stated that ''[c]rude oil, condensate and produced water are typically stored in fixed-roof storage vessels.'' 76 FR 52763. Similarly, in the preamble discussion of the estimated impacts, we addressed only vessels storing these types of materials. Thus, we indicated at proposal that our intent was to regulate only certain storage vessels (i.e., those storage vessels that may likely emit VOC emissions), not every container.

We had previously believed that, by including a VOC emissions threshold in the storage vessel control requirements in § 60.5395 of the final rule, the rule effectively limited the applicability of the storage vessels emission standards to only storage vessels containing crude oil, condensate, intermediate hydrocarbon liquids, or produced water because, in all likelihood, only tanks storing these materials would have the potential to emit VOC at or above the threshold. However, as the petitioners pointed out, the definition in the final rule was stated in broad enough terms that a reasonable interpretation of the definition could lead to confusion as to which containers were considered to be storage vessels. If left unchanged, the storage vessel definition could result in a significant burden on the owner or operator because every container on-site may have to be identified and potential VOC emissions determined (and requisite records maintained). The proposed amendments to the storage vessel definition now limit the definition to vessels containing only those types of materials for which we originally intended the NSPS to apply. To provide further clarification, we are proposing to add definitions in § 60.5430 for condensate, hydrocarbon liquid and produced water. We are proposing to adopt the definitions of these terms in 40 CFR part 63, subpart HH, which similarly requires 95-percent emission reduction from storage vessels that are major sources of hazardous air pollutants.

3. Storage Vessel Affected Facility Definition at § 60.5365(e)

In § 60.5365(e) of the final rule (77 FR 49490), we described the affected facility as ''[e]ach storage vessel affected facility, which is a single storage vessel located in the oil and natural gas production segment, natural gas processing segment or natural gas transmission and storage segment.'' In § 60.5395 of the final rule, we require affected facilities emitting more than 6 tpy VOC to reduce VOC emissions by 95.0 percent.

Several petitioners stated that by not including the VOC emissions threshold in the affected facility definition, the EPA significantly increased the population of storage vessels potentially affected by the rule. The petitioners asserted that this very broad description of affected facility would result in unnecessary notification, recordkeeping and reporting burden, even if the storage vessels had no VOC emissions or are not subject to the control requirement.

We had not intended to subject storage vessels emitting below the 6 tpy VOC to the NSPS. Although the final rule is clear that storage vessels that have always had a PTE below the 6 tpy threshold are not subject to the control requirement, the rule inadvertently requires them to comply with the recordkeeping and reporting requirements in the final rule, which are largely associated with demonstrating and assuring compliance with the control requirement. Further, having these storage vessels be subject to the NSPS could trigger state permitting requirements. We believe these associated burdens are not necessary for storage vessels with VOC emissions below 6 tpy, which are not subject to the control requirement. On the contrary, we believe it is important to limit the scope of the NSPS only to those storage vessels the EPA intended to control, thereby avoiding unnecessary unintended consequences. For the reason stated above, we agree with petitioners' suggestion and are proposing to include the 6 tpy PTE threshold in the ''storage vessel affected facility'' definition in 60.5395(e).

Petitioners asserted that a storage vessel's emissions for purposes of applying the emissions threshold should consider any legal and practically enforceable emissions limit below 6 tpy. We are proposing to clarify at § 60.5365(e) that a source can take into account any legal and practically enforceable emissions limit under federal, state, local or tribal authority when determining the VOC emission rate for purposes of this threshold (i.e., they would not be subject to the storage vessel provisions of the NSPS if their potential to emit VOC was required to be less than 6 tpy under such limitation and they in fact were below that limit).

In addition, petitioners had suggested that sources with a legal and practically enforceable requirement for at least 95 percent control should not be affected facilities under the NSPS. The petitioners' proposal seems to suggest that as long as an emission limitation equivalent to the NSPS emission standards can be enforced by state or another federal requirement, compliance with the NSPS is not necessary. The EPA is concerned regarding the absence of EPA oversight, which CAA section 111 contemplates. We are also concerned that such a broad proposition, if adopted, would not be limited to just this NSPS but may inadvertently impact other future EPA regulations as well. Although we are not proposing to add such a provision in this action, we solicit comment on the petitioners' suggested approach, in particular on how the EPA may implement oversight of the enforcement of this NSPS and on distinguishing characteristics between this NSPS and other EPA regulations to warrant this approach here without inadvertently extending its use in other rulemakings. We also solicit comment if such an approach is permissible under CAA section 111.

The final rule allows 30 days to determine emissions, followed by another 30 days to install controls, only for storage vessels located at well sites with no existing well in production. For storage vessels located at well sites with one or more wells in production, the NSPS allowed no time for determining emissions but required control on startup. This provision was based on the assumption that, for storage vessels at ongoing production sites, the owner or operator would be able to anticipate the rate and characteristics of the liquids entering the vessel, which would obviate the need for time for emissions determination and would allow the appropriate controls to be applied on startup if needed. Petitioners raised this provision as problematic and stated that

the NSPS should provide time for emissions determination and control device installation for all storage vessels, not just ones at locations with no existing well in production. According to the petitioners, in many cases at well sites and at other locations, emissions cannot be estimated until the storage vessel is in operation, given the uncertainties in flowrate and other characteristics of the liquid flowing to the vessel. When a new well comes online, even at a location where wells are already in production, liquids from the new well can have significantly different characteristics than liquids from the existing wells. Further, petitioners noted that the language in the final rule could be incorrectly interpreted that only storage vessels located at well sites were potentially subject to the NSPS. In light of the new information, we propose that all new, modified or reconstructed Group 2 storage vessels have up to 30 days after startup to determine the emissions rate and, if emissions are estimated to be 6 tpy or more, controls must be in operation no later than 60 days from startup or by April 15, 2014, (our proposed new date for implementing control), whichever is later. It is our intent that the NSPS address VOC emissions from storage vessels located not only at wells but at any location from the well to the point of custody transfer to an oil pipeline or to the point of custody transfer from the natural gas transmission and storage segment to the local distribution company.

Petitioners also asserted that 60 days was not a sufficient period to determine emissions and install controls if required, although they did not provide details supporting this assertion. We believe that 60 days is sufficient and propose to retain this period. We believe, since modeling is generally the method by which emissions are estimated, based on several parameters of the material entering the storage vessel, that 30 days is sufficient for determining whether emissions reach the threshold. Further, we believe that an additional 30 days is sufficient to install the combustor and the relatively simple associated closed vent system.

We are also proposing to add a provision to clarify that a storage vessel affected facility whose VOC emissions decrease to less than the threshold of 6 tpy, even for an extended time, will remain an affected facility. We believe this additional clarification is necessary, especially in light of our proposed alternative emission limit of less than 4 tpy uncontrolled VOC emissions, to address the situation where emissions from a storage vessel affected facility declines and later increases. We believe it is important to clarify for both the regulated community and regulatory agencies that such a storage vessel remains an affected facility and would be required to meet the emission standards of either the 95 percent VOC reduction requirement or the proposed alternative emission limit of less than 4 tpy VOC. This issue is related to the discussion below in section VI.A.4 pertaining to continued control device use after extended periods of low emissions.

One petitioner asserted that the final rule creates uncertainty because sources subject to the NSPS may trigger state minor or major source permitting requirements. Subsequently, the petitioner clarified that much of the uncertainty focuses on treatment of replacement storage vessels that are installed in cases of failure of existing storage vessels due to leakage or other issues. The petitioner was concerned that some state permitting programs require construction permits for sources that are affected facilities under any NSPS. Under subpart OOOO, a replacement storage vessel would be considered a new source and an affected facility if it has a PTE of 6 tpy or more and is put into service after August 23, 2011.

Although we understand that operators needing to install replacement tanks may potentially have difficulty meeting state permitting requirements, it is unclear how the NSPS could be revised to help address this issue. Accordingly, we solicit comment on how the NSPS could address the issue the petitioner raised.

4. Alternative Mass-Based Standard for Storage Vessel Affected Facilities

The petitioners pointed out that Wyoming [1] allows for control devices to be removed after sustained periods of uncontrolled emissions below the applicability threshold. The petitioners also contended that allowing control devices to be removed from lower emitting storage vessels would increase the number of control devices available to install on new storage vessels, which they assert would help alleviate the shortage of control devices discussed above in section VI.A.1.

Although this proposed rule includes an amendment to assure adequate supply of control devices, the number of future storage vessel affected facilities that would require control is uncertain and may exceed our estimated 970 per month (which we relied on in our proposed amendment to address this issue). We believe that petitioners' suggestion is a reasonable approach to help alleviate any potential control device shortage issue for the following reason. Storage vessels at oil and natural gas production sites are unlike many other sources in that emissions can reasonably be expected to decrease over time and, potentially, increase again under certain circumstances. After production declines, associated emissions would also decline. Petitioners' suggestion would help build a buffer against supply shortage by allowing control devices on these low emitting storage vessels to be relocated to control emissions from storage vessels that have just come online and emitting above 6 tpy. For the reason stated above, we are proposing that affected sources meet either the 95 percent VOC reduction standard or an alternative, mass-based numeric limit on uncontrolled emissions.

Petitioners suggested that 6 tpy, the applicability threshold for storage vessel affected facilities under the NSPS, also be used as the threshold for uncontrolled emissions for allowing removal of storage devices. We disagree that 6 tpy is the appropriate alternative limit. In the final NSPS rule, we did not establish 6 tpy as an emission limit. Rather, 6 tpy is an applicability threshold, at which level we have determined that it is cost effective to require installation and operation of a control device to achieve 95 percent VOC reduction. At 6 tpy uncontrolled emissions, 95 percent control would result in an emission rate of 0.3 tpy.

We think the appropriate limit would likely be something less than 4 tpy; we believe controlling storage vessels above that level could still achieve meaningful VOC reduction. We are therefore proposing to amend § 60.5395(a) to include both the existing VOC emissions reduction component and an alternative mass-based limit of less than 4 tpy for uncontrolled emissions. The proposed uncontrolled emission limit would be available to those who can demonstrate, based on records for the 12 months immediately preceding the demonstration and while the control is on, that the uncontrolled emissions during that 12 months period would have been below 4 tpy. This uncontrolled emission rate can be calculated using information available to the facility operator, including such parameters as separator pressure, liquid throughput and API gravity. We believe this alternate standard reflects the decline in production that all wells experience over time and allows control devices to be reused at other locations

[1] Oil and Gas Production Facilities, Chapter 6, Section 2 Permitting Guidance. March 2010.

which would help alleviate control device supply shortages. If, however, uncontrolled emissions increase to 4 tpy or above, the sources would need to once again comply with the 95 percent control requirement.

As mentioned above, we are proposing to amend § 60.5395(a) to require sources to achieve either: (1) 95-percent VOC reduction; or (2) uncontrolled VOC emissions of less than 4 tpy. We are proposing that operators electing the alternative emission limit would be required to determine and keep records of the storage vessel's emission rate at least monthly while operating under the alternative emissions limit. Similar to provisions in the final rule for determining annual emissions from storage vessels for applicability purposes, we propose that operators may use generally accepted models to estimate uncontrolled emissions.

We solicit comment on our proposal to establish an alternative, mass-based numeric limit on uncontrolled emissions. We also solicit comment on whether a limit of less than 4 tpy is appropriate and, if not, what an appropriate limit would be, including any supporting data and rationale. In addition, we solicit comment on whether frequencies other than monthly would be appropriate for the emissions determinations while operating under the alternative emissions limit, whether the frequency of such determinations should decrease after some number of periodic estimates below 4 tpy, and whether the emissions determination should be required only after some event that would likely increase emissions.

Under the final NSPS rule, owners and operators at well sites with no wells already in production have 30 days after determining emissions to procure and install control. As discussed elsewhere in this notice, we are proposing to provide such 30 days to owners and operators at all wells sites. We are similarly proposing here that, if a monthly emissions determination indicates VOC emissions of 4 tpy or greater, the owner or operator would need to comply with the 95 percent control standard by no later than 30 days after the determination indicated 4 tpy or greater VOC emissions. Under our proposed compliance demonstration requirement, the alternative emission limit would again be available for that storage vessel only after another 12 months of uncontrolled VOC emissions less than 4 tpy while operating under the 95 percent VOC reduction requirement.

While we think that owners and operators may need time to reinstall control, we are concerned with leaving the emissions unaddressed during that period. We therefore solicit comment on whether a 30 day period is needed for owners and operators to reinstall control and what appropriate measures should be taken during the period to control emissions.

B. Periodic Monitoring and Testing of Closed-Vent Systems and Control Devices

The final NSPS (77 FR 49490) requires that VOC emissions be reduced by 95 percent for storage vessel affected facilities with VOC emissions of 6 tpy or more. We had anticipated that most owners and operators will use a combustion control device to achieve the required level of emission reduction. The final NSPS requires an initial performance test, installation and operation of CPMS and calculation of daily averages of the continuously monitored parameters, among other requirements. As discussed above in section VI.A.1, we have revised our estimate of the number of storage vessels affected by the final rule from about 300 to approximately 11,600 per year.

Several of the petitioners assert that the compliance monitoring requirements are overly complex and stringent given the large number affected storage vessels each year and the remoteness of the well sites at which they are installed. The petitioners argue that the well sites are unmanned for periods of time up to a month. According to the petitioners, proper operation of the CPMS and performance of other monitoring requirements would require specialized personnel to be on-site far more frequently. The petitioners also point out that most well sites do not have the communications and power infrastructure in place to operate the CPMS.

The petitioners also argue that insufficient resources are available to perform the required Method 21 testing of the closed-vent systems and that lengthy (the NSPS requires a 2 hour observation) Method 22 testing of combustion control devices is unnecessary and overly burdensome.

Based on our revised estimate of the number of storage vessel affected facilities, combined with our knowledge of the remoteness of these locations, we believe that petitioners have raised legitimate issues regarding the monitoring and testing requirements relative to control devices for storage vessels in the final NSPS rule and that these issues warrant our reconsideration of these requirements. The EPA also recognizes that delaying implementation of the storage vessel NSPS pending this reconsideration would further delay the important environmental benefits that will result from the NSPS. We are working with stakeholders to fully evaluate these issues and intend to complete our reconsideration of these monitoring and testing requirements by the end of 2014.

The additional information discussed above has raised significant concerns that the compliance monitoring provisions and field testing provisions of the final rule may not be appropriate for this large number of affected storage vessels, which is much greater than we had expected and with many in remote locations. Therefore, we are proposing certain streamlined monitoring and continuous compliance demonstration requirements to provide assurance during the EPA's reconsideration process, that closed-vent systems and control devices are designed and operated properly and that the control devices, when in use, are achieving the required 95 percent control.

We believe the proposed requirements do not pose the concerns raised by the petitioners regarding burden imposed by the final rule due to the vast number of facilities and remote locations involved. The requirements we are proposing are intended to be carried out by personnel routinely at the well sites without the need for specialized training or instrumentation.

Meanwhile, we will continue to fully evaluate the compliance demonstration and monitoring issues raised by the petitioners. We intend to complete our reconsideration of these requirements, along with other issues for which we intend to grant reconsideration, at a later date.

As mentioned above, we are proposing a suite of streamlined compliance and monitoring requirements that would apply instead of the requirements in the final rule during the EPA's reconsideration of associated issues. First, under § 60.5416, instead of the detailed Method 21 monitoring requirements, the proposed requirements would include inspection requirements for covers and closed-vent systems. The proposed inspection requirements include monthly sensory (i.e., OVA) inspections of: (1) Closed-vent system joints, seams and other sealed connections (e.g., welded joints); (2) other closed-vent system components such as peak pressure and vacuum valves; and (3) the physical integrity of tank thief hatches, covers, seals and pressure relief valves.

Second, under § 60.5417, instead of the CPMS requirements, the proposed requirements would include the following inspection requirements: (1) Monthly observation for visible smoke emissions employing section 11 of EPA Method 22 for a 15 minute period; (2) monthly visual inspection of the physical integrity of the control device; and (3) monthly check of the pilot flame and signs of improper operations. If the pilot flame is absent or if smoking is observed more than 1 minute during a 15-minute period, then the operator must take further action to ascertain the cause of the malfunction, including checking the combustor air vent for obstructions and checking for liquid from the knockout drum reaching the combustor (i.e., the knockout drum is not draining properly). The owner or operator would be required to take corrective action as soon as practicable and as safely as possible after visible smoke emissions or other problems are observed. Each inspection of the storage vessel and associated control device and closed-vent system would be required to be documented in a logbook required to be kept securely on-site. Many storage vessels already have weatherproof containers mounted nearby where other records are kept.

Third, we are proposing requirements that would apply instead of the field performance testing requirements in § 60.5413. We are proposing to require that, where controls are used to reduce emissions, sources use control devices that by design can achieve 95 percent or more emission reduction and operate such devices according to the manufacturer's instructions, procedures and maintenance schedule, including appropriate sizing of the combustor for the application. Documentation that a combustor is designed for at least 95 percent control could include such items as manufacturer technical literature showing combustor performance, manufacturer's guarantee of control efficiency, relevant test reports, etc. We are retaining and strongly encourage use of the option for operators to employ combustor models that pass manufacturer-conducted performance tests according to the EPA combustor test protocol. We believe that operators have an incentive to use manufacturer-tested combustors, since those combustors are not subject to subsequent performance tests. However, we seek comment on other potential approaches to provide incentive for operators to employ manufacturer-tested combustor models.

We solicit input from the public and from states with relevant experience on the effectiveness of these types of streamlined monitoring techniques in assuring compliance with the emission reduction measures of the NSPS. Further, we encourage operators to document their experiences with these streamlined measures to better inform the EPA in its future evaluation of these measures.

C. Test Protocol for Combustion Control Devices

The proposed oil and natural gas sector NESHAP (76 FR 52738) included an option for manufacturers' performance testing of certain combustion control devices as an alternative to on-site testing by the owner or operator. We explained the need for this alternative in the preamble to the proposed rule (see 76 FR 52785). The proposed NSPS also included this option. In order to promote consistency between the oil and natural gas sector NSPS and NESHAP, the proposed NSPS rule language referenced the relevant sections in the NESHAP (40 CFR 63, subpart HH) for the manufacturers' test protocol.

We received comments to the proposed rule indicating that the cross-referencing to the NESHAP was burdensome and posed other problems. In response, we eliminated the cross-referencing by incorporating the manufacturers' performance test protocol from the NESHAP into the final NSPS.

After publication of the final rule, some of the petitioners pointed out that the language we used in the final NSPS appeared to indicate that manufacturers' performance testing is mandatory for all combustion control devices. The petitioners also noted inconsistencies between the regulatory language in the NSPS and NESHAP for the manufacturers' performance test protocol.

In response to the petitioners' comments, we reviewed the manufacturers' performance test protocol in the NSPS. We found that not all of the revisions made to the NESHAP protocol after proposal were carried over to the NSPS. These revisions involved modifications to the test procedures and reporting requirements. This inadvertent error led to most of the issues raised by the petitioners. It was the EPA's intent to have essentially the same manufacturers' performance test protocol and reporting requirements in both the NSPS and the NESHAP.

In response, we are proposing to amend § 60.5413(d) to be consistent with the current requirements of 40 CFR 63.772(h) to ensure consistency between the rules. This effort will also streamline testing, because enclosed combustor models that pass the test protocol will meet both the NSPS and NESHAP requirements, eliminating the need to test each model for NSPS and NESHAP compliance separately.

Additionally, we are proposing to modify the reporting requirements for owners and operators using a manufacturer tested control device in the NSPS to match the same requirements in the NESHAP. We are proposing to revise § 60.5412(a)(i) to clarify that the manufacturers' performance testing applies to the model of the combustion control device, not each individual control device. Finally, we are proposing to clarify that manufacturers' performance testing is optional by revising § 60.5415(e)(2)(vii).

As discussed in the 2011 proposed rule preamble (76 FR 52785), performance testing of control devices that are not configured with a distinct combustion chamber presents several technical issues that are more optimally addressed through manufacturer testing, and once these units are installed at a facility, through periodic inspection and maintenance in accordance with manufacturers' recommendations.

In the final rule (77 FR 49490), the EPA provided a path for compliance that involved operators purchasing certified combustors combined with annual compliance demonstrations. We would like to explore whether the compliance certification process could be made sufficiently robust to reduce or minimize future compliance demonstration obligations. We solicit comment on the desirability of such an approach and suggestions on how to design a sufficiently rigorous certification process to assure compliance while minimizing burden on both operators and implementing agencies.

We are also soliciting comment on one potential framework for implementing the certification process for enclosed combustors used to meet the emissions standards under NSPS subpart OOOO and NESHAP subpart HH. The EPA notes that the following concept is one possible compliance tool, and welcomes comment on this or any other compliance tool incorporating an enclosed combustor certification program. We plan to continue to work with all stakeholders as we further develop this concept with the goal of ultimately designing a pathway that assures compliance without slowing responsible production of oil and natural gas.

One possible compliance tool includes a requirement for owners or operators to use enclosed combustors that have been certified by the EPA. The

manufacturer's role would be to submit a performance test for each unique model manufactured. The manufacturer could submit the performance test to the EPA where it would be evaluated for completeness and compliance with the emissions standard required by the rule. In order to ease compliance, the EPA could require that the manufacturer's control device be sold as ''compliance ready''; i.e. equipped with a thermocouple (or equivalent device) and data recorder. Initial discussions with control device manufacturers indicate that this may already be common practice. The EPA requests comment as to whether enclosed combustors could be sold as ''compliance ready,'' and whether such an approach would ease compliance.

An owner or operator that purchases a certified control device could demonstrate initial compliance by providing proof of purchase of the EPA-certified device, in the form of a purchase order or receipt. The EPA could supplement such a requirement with a manufacturer reporting requirement providing the names of entities that had purchased certified control devices. Such a model of reporting may ensure that the purchase and installation of certified devices has occurred, and could also ensure compliance with the rule.

The owner or operator could demonstrate ongoing compliance, in part, through monitoring of the presence of the continuous pilot flame. As discussed previously, a certified control device could be sold as ''compliance ready''; i.e., it would be equipped with a thermocouple (or equivalent device) and data recorder thereby simplifying the continuous compliance demonstration for the owner or operator.

We welcome comment on this potential compliance option or on other compliance options.

D. Annual Report and Compliance Certification

Petitioners also asserted that the 30–day period to submit the annual report in § 60.5420(b) is too short because of the large number of affected facilities to be included in the annual reports of many companies and the requirement to have the reports signed by a responsible official. We agree that the 30-day period may be too short to compile all of the required information and properly inform a responsible official such that the official may certify the truth, accuracy and completeness of the annual report. Therefore, we are proposing to amend § 60.5420(b) to allow 90 days from the end of the compliance period for submittal of the annual report and compliance certification. This is consistent with Title V reporting and certification requirements.

One petitioner pointed out that the public was not provided an opportunity to comment on the requirement in the final rule for certification by a responsible official and that such certification, modeled on Title V requirements, is not appropriate for the oil and natural gas sector due to the number of sources involved and other factors. We have reconsidered the certification requirement and, for the same reasons provided in the final rule preamble (77 FR 49527), we are proposing to retain this requirement. Specifically, we believe that self-certification is an important mechanism for assuring the public that the information submitted by each facility is accurate. In addition, the Title V program has successfully employed self-certification since its inception and we believe it is a good model for the certification provisions in the final rule. For these reasons, we are proposing to retain the certification provision in the final rule.

We believe that the petitioner's main concern may have been the 30-day period allowed for submittal of the certification, which the petitioner claimed insufficient in light of the number of affected sources. As discussed above, we are proposing to allow 90 days for submitting the compliance certification.

E. Properly Designed Storage Vessels, Closed-Vent Systems and Control Devices

It is the EPA's experience that proper design and sizing of storage vessels and their associated closed-vent systems and control devices are important considerations in effective control of VOC emissions from storage vessels. For example, such factors as type of gasket material, weighting of thief hatch covers, release point of pressure relief valves, sizing of the storage vessel itself, diameter of lines conveying vapor to the control device, sizing of the control device and other factors can greatly affect the ability of the system to achieve the control efficiency required by the NSPS. Improper design or operation of the storage vessel and its control system can result in occurrences where peak flow overwhelms the storage vessel and its capture systems, resulting in emissions that do not reach the control device, effectively reducing the control efficiency. We believe that it is essential that operators employ properly designed, sized and operated storage vessels to achieve effective emissions control. We believe that such efforts on the part of owners and operators can result in more effective control of VOC emissions from storage vessels subject to the NSPS. Although we are not proposing today to add requirements for proper design of storage vessels and associated closed-vent systems and control devices, we solicit comment on whether such provisions should be included in the final rule.

VII. Technical Corrections and Clarifications

Following publication of the final NSPS, we subsequently determined, following review of the petitions and discussions with affected parties, that the final rule warrants correction clarification in certain areas. The EPA is proposing corrections to applicability dates and monitoring, recordkeeping and reporting requirements for all affected facilities. In addition, we are proposing corrections that are editorial in nature including typographical and grammatical errors, as well as incorrect cross-references. Details of the specific changes we are proposing to the regulatory text may be found in the docket for this action.[2]

VIII. Impacts of This Proposed Rule

Our analysis shows that owners and operators of storage vessel affected facilities would choose to install and operate the same or similar air pollution control technologies under the proposed standards as would have been necessary to meet the previously finalized standards. We project that this rule will result in no significant change in costs, emission reductions or benefits. Even if there were changes in costs for these units, such changes would likely be small relative to both the overall costs of the individual projects and the overall costs and benefits of the final rule. Since we believe that owners and operators would put on the same controls for this proposed rule that they would have for the original final rule, there should not be any incremental costs related to this proposed revision.

A. What are the air impacts?

We believe that owners and operators of storage vessel affected facilities will install the same or similar control technologies to comply with the revised standards proposed in this action as they would have installed to comply

[2] Memorandum from Moore, Bruce, U.S. EPA, to Docket No. EPA–HQ–OAR–2010–0505, ''Technical Corrections to the Final Oil and Natural Gas Sector New Source Performance Standards.'' January 7, 2013.

with the previously finalized standards. Accordingly, we believe that this proposed rule will not result in significant changes in emissions of any of the regulated pollutants.

B. What are the energy impacts?

This proposed rule is not anticipated to have an effect on the supply, distribution or use of energy. As previously stated, we believe that owners and operators of storage vessel affected facilities would install the same or similar control technologies as they would have installed to comply with the previously finalized standards.

C. What are the compliance costs?

We believe there will be no significant change in compliance costs as a result of this proposed rule because owners and operators of storage vessel affected facilities would install the same or similar control technologies as they would have installed to comply with the previously finalized standards.

D. What are the economic and employment impacts?

Because we expect that owners and operators of storage vessel affected facilities would install the same or similar control technologies to meet the standards proposed in this action as they would have chosen to comply with the previously finalized standards, we do not anticipate that this proposed rule will result in significant changes in emissions, energy impacts, costs, benefits or economic impacts. Likewise, we believe this rule will not have any impacts on the price of electricity, employment or labor markets or the U.S. economy.

E. What are the benefits of the proposed standards?

As previously stated, the EPA anticipates the oil and natural gas sector will not incur significant compliance costs or savings as a result of this proposal and we do not anticipate any significant emission changes resulting from this rule. Therefore, there are no direct monetized benefits or disbenefits associated with this proposed rule.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

A RIA was prepared for the April 2012 final rule and can be found at: *http://www.epa.gov/ttn/ecas/regdata/RIAs/oil_natural_gas_final_neshap_nsps_ria.pdf.* Because this action does not impose new compliance costs on affected sources, we project that this rule will result in no significant change in costs, emission reductions or benefits in 2015, the year of full implementation of the NSPS.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Today's notice of reconsideration does not change the information collection requirements previously finalized and, as a result, does not impose any additional burden on industry. However, OMB has previously approved the information collection requirements contained in the existing regulations (see 77 FR 49490) under the provisions of the PRA, 44 U.S.C. 3501, et seq., and has assigned OMB control number 2060–0673). The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business in the oil or natural gas industry whose parent company has no more than 500 employees (or revenues of less than $7 million for firms that transport natural gas via pipeline); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a SISNOSE. In determining whether a rule has a SISNOSE, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a SISNOSE if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The EPA has determined that none of the small entities will experience a significant impact because the notice of reconsideration imposes no additional compliance costs on owners or operators of affected sources. We have therefore concluded that today's notice of reconsideration will not result in a SISNOSE. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act of 1995

This action contains no federal mandates under the provisions of Title II of the UMRA of 1995, 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal is a reconsideration of an existing rule and imposes no new impacts or costs. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effect on tribal governments, on the relationship between the federal government and Indian tribes or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action has no impacts thus health and risk assessments were not conducted.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to HAP from oil and natural gas sector activities.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the NTTAA, Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use VCS in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposal is a reconsideration of an existing rule and imposes no new impacts or costs.

List of Subjects in 40 CFR Part 60

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping.

Dated: March 28, 2013.

Bob Perciasepe,

Acting Administrator.

For the reasons set out in the preamble, Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart OOOO—[Amended]

■ 2. Section 60.5365 is amended by revising paragraph (e) to read as follows:

§ 60.5365 Am I subject to this subpart?

* * * * *

(e) Each storage vessel affected facility, which is a single storage vessel located in the oil and natural gas production segment, natural gas processing segment or natural gas transmission and storage segment and has the potential for VOC emissions equal to or greater than 6 tpy taking into account requirements under a legally and practically enforceable limit in an operating permit or by other mechanism. A storage vessel affected facility that subsequently has its potential for VOC emissions decrease to less than 6 tpy shall remain an affected facility under this subpart. A storage vessel that has been determined in accordance with § 60.5395(c) to have a potential to emit of less than 6 tpy is not a storage vessel affected facility, provided that the owner or operator has maintained record of such determination.

* * * * *

■ 3. Section 60.5380 is amended by:
■ a. Revising paragraph (a)(2); and
■ b. Revising paragraphs (b) and (c).

The revisions read as follows:

§ 60.5380 What standards apply to centrifugal compressor affected facilities?

* * * * *

(a) * * *

(2) If you use a control device to reduce emissions, you must equip the wet seal fluid degassing system with a cover that meets the requirements of § 60.5411(b), that is connected through a closed vent system that meets the requirements of § 60.5411(a) and routed to a control device that meets the conditions specified in § 60.5412(a), (b) and (c). As an alternative to routing the closed vent system to a control device, you may route the closed vent system to a flow line, as defined in § 60.5430.

(b) You must demonstrate initial compliance with the standards that apply to centrifugal compressor affected facilities as required by § 60.5410(b).

(c) You must demonstrate continuous compliance with the standards that apply to centrifugal compressor affected facilities as required by § 60.5415(b).

* * * * *

■ 4. Section 60.5390 is amended by:
■ a. Revising the introductory text;
■ b. Revising paragraph (a); and
■ c. Revising paragraphs (c)(1) and (2).

The revisions read as follows:

§ 60.5390 What standards apply to pneumatic controller affected facilities?

For each pneumatic controller affected facility you must comply with the VOC standards, based on natural gas as a surrogate for VOC, in either paragraph (b)(1) or (c)(1) of this section, as applicable. Pneumatic controllers meeting the conditions in paragraph (a) of this section are exempt from this requirement. However, you must comply with the requirements in either paragraph (b)(2) or (c)(2), as applicable.

(a) The requirements of paragraph (b)(1) or (c)(1) of this section are not required if you determine that the use

of a pneumatic controller affected facility with a bleed rate greater than the applicable standard is required based on functional needs, including but not limited to response time, safety and positive actuation.

* * * * *

(c)(1) Each pneumatic controller affected facility constructed, modified or reconstructed on or after October 15, 2013, at a location between the wellhead and a natural gas processing plant or the point of custody transfer to an oil pipeline must have a bleed rate less than or equal to 6 standard cubic feet per hour.

(2) Each pneumatic controller affected facility at a location between the wellhead and a natural gas processing plant or the point of custody transfer to an oil pipeline must be tagged with the month and year of installation, reconstruction or modification, and identification information that allows traceability to the records for that controller as required in § 60.5420(c)(4)(iii).

* * * * *

■ 5. Section 60.5395 is revised to read as follows:

§ 60.5395 What standards apply to storage vessel affected facilities?

Except as provided in paragraph (h) of this section, you must comply with the standards in this section for each storage vessel affected facility.

(a)(1) If you are the owner or operator of a Group 1 storage vessel affected facility as defined in this subpart, you must comply with paragraph (b) of this section.

(2) If you are the owner or operator of a Group 2 storage vessel affected facility as defined in this subpart, you must comply with paragraphs (c) through (g) of this section.

(b) *Requirements for Group 1 storage vessel affected facilities.* (1) You must submit a notification identifying each Group 1 storage vessel, including its location, by October 15, 2013.

(2) On or after April 12, 2013, if you have an event that could reasonably be expected to increase VOC emissions from your Group 1 storage vessel, you must comply with paragraphs (d) through (g) of this section. For the purposes of this section, an event includes, but is not limited to, the examples specified in paragraphs (b)(2)(i) through (iv) of this section.

(i) Routing a well to the storage vessel that was not previously routed to the storage vessel.

(ii) Conducting hydraulic fracturing on a well routed to the storage vessel.

(iii) Conducting hydraulic refracturing on a well routed to the storage vessel.

(iv) Any other event that could increase the VOC emissions from the storage vessel affected facility.

(c) *Emissions determination.* You must comply with paragraphs (c)(1) or (2) of this section.

(1) For Group 2 storage vessels constructed, modified or reconstructed before April 15, 2014, you must determine the VOC emission rate no later than April 15, 2014, or 30 days after startup, whichever is later. To make this determination, you must use any generally accepted model or calculation methodology. If the VOC emission rate is determined to be equal to 6 tpy or greater, you must comply with paragraphs (d) through (g) of this section.

(2) For Group 2 storage vessels constructed on or after April 15, 2014, you must determine the VOC emission rate using any generally accepted model or calculation methodology within 30 days after startup and minimize emissions to the extent practicable during the 30-day period using good engineering practices through the period prior to installation of control. If the VOC emission rate is determined to be equal to 6 tpy or greater, you must comply with paragraphs (d) through (g) of this section.

(d) You must comply with the requirements of paragraph (d)(1) or (2) of this section.

(1) Reduce VOC emissions by 95.0 percent or greater by April 15, 2014 or within 60 days after startup, whichever is later.

(2) Maintain the VOC emissions from the storage vessel affected facility at less than 4 tpy without considering control, provided that you have been using a control device and have demonstrated that the VOC emissions have been below 4 tpy without considering control for at least the 12 consecutive months immediately preceding the demonstration. You must determine the VOC emission rate each month using any generally accepted model or calculation methodology and minimize emissions to the extent practicable during this period using good engineering practice. Monthly calculations must be separated by at least 14 days.

(e) Control requirements. (1) Except as required in paragraph (e)(2) of this section, if you use a control device (such as an enclosed combustion device or vapor recovery device) to reduce emissions from your storage vessel affected facility, you must equip the storage vessel with a cover that meets the requirements of § 60.5411(b) and is connected through a closed vent system that meets the requirements of § 60.5411(c), and you must route emissions to a control device that meets the conditions specified in § 60.5412(c) and (d). As an alternative to routing the closed vent system to a control device, you may route the closed vent system to a flow line, as defined in § 60.5430. If you route emissions to a flow line, you must equip the storage vessel with a cover that meets the requirements of § 60.5411(b) and is connected through a closed vent system that meets the requirements of § 60.5411(c).

(2) If you use a floating roof to reduce emissions, you must meet the requirements of § 60.112b(a)(1) or (2) and the relevant monitoring, inspection, recordkeeping, and reporting requirements in 40 CFR part 60, subpart Kb.

(f) *Reserved.*

(g) *Compliance, notification, recordkeeping, and reporting.* If you use a control device to reduce emissions or if you route your emissions to a flow line, you must comply with paragraphs (g)(1) and (2) of this section.

(1) You must demonstrate initial compliance with standards as required by § 60.5410(h).

(2) You must demonstrate continuous compliance with standards as required by § 60.5415(e)(3).

(3) You must perform the required notification, recordkeeping, and reporting as required by § 60.5420.

(h) *Exemptions.* This subpart does not apply to storage vessels subject to and controlled in accordance with the requirements for storage vessels in 40 CFR part 60, subpart Kb, 40 CFR part 63, subparts G, CC, HH, or WW.

■ 6. Section 60.5410 is amended by:

■ a. Revising the introductory text;

■ b. Revising paragraphs (a)(3) and (4);

■ c. Revising paragraphs (b)(2) through (5);

■ d. Revising paragraphs (b)(7) and (8);

■ e. Revising paragraph (d) introductory text;

■ f. Revising paragraphs (d)(1) and (2);

■ g. Revising paragraph (d)(4);

■ h. Removing and reserving paragraph (e); and

■ i. Adding paragraphs (h) and (i).

The revisions and addition read as follows:

§ 60.5410 How do I demonstrate initial compliance with the standards for my gas well affected facility, my centrifugal compressor affected facility, my reciprocating compressor affected facility, my pneumatic controller affected facility, my storage vessel affected facility, and my equipment leaks and sweetening unit affected facilities at onshore natural gas processing plants?

You must determine initial compliance with the standards for each

affected facility using the requirements in paragraphs (a) through (i) of this section. The initial compliance period begins on October 15, 2012, or upon initial startup, whichever is later, and ends no later than one year after the initial startup date for your affected facility or no later than one year after October 15, 2012. The initial compliance period may be less than one full year.

(a) * * *

(3) You must maintain a log of records as specified in § 60.5420(c)(1)(i) through (iv) for each well completion operation conducted during the initial compliance period.

(4) For each gas well affected facility subject to both § 60.5375(a)(1) and (3), as an alternative to retaining the records specified in § 60.5420(c)(1)(i) through (iv), you may maintain records of one or more digital photographs with the date the photograph was taken and the latitude and longitude of the well site imbedded within or stored with the digital file showing the equipment for storing or re-injecting recovered liquid, equipment for routing recovered gas to the gas flow line and the completion combustion device (if applicable) connected to and operating at each gas well completion operation that occurred during the initial compliance period. As an alternative to imbedded latitude and longitude within the digital photograph, the digital photograph may consist of a photograph of the equipment connected and operating at each well completion operation with a photograph of a separately operating GIS device within the same digital picture, provided the latitude and longitude output of the GIS unit can be clearly read in the digital photograph.

(b) * * *

(2) If you use a control device to reduce emissions, you must equip the wet seal fluid degassing system with a cover that meets the requirements of § 60.5411(b) that is connected through a closed vent system that meets the requirements of § 60.5411(a) and is routed to a control device that meets the conditions specified in § 60.5412(a), (b) and (c). As an alternative to routing the closed vent system to a control device, you may route the closed vent system to a flow line, as defined in § 60.5430.

(3) You must conduct an initial performance test as required in § 60.5413 within 180 days after initial startup or by October 15, 2012, whichever is later, and you must comply with the continuous compliance requirements in § 60.5415(b)(1) through (3).

(4) You must conduct the initial inspections required in § 60.5416(a) and (b).

(5) You must install and operate the continuous parameter monitoring systems in accordance with § 60.5417(a) through (g), as applicable.

* * * * *

(7) You must submit the initial annual report for your centrifugal compressor affected facility as required in § 60.5420(b)(3) for each centrifugal compressor affected facility.

(8) You must maintain the records as specified in § 60.5420(c)(2).

* * * * *

(d) To achieve initial compliance with emission standards for your pneumatic controller affected facility you must comply with the requirements specified in paragraphs (d)(1) through (6) of this section, as applicable.

(1) You must demonstrate initial compliance by maintaining records as specified in § 60.5420(c)(4)(ii) of your determination that the use of a pneumatic controller affected facility with a bleed rate greater than 6 standard cubic feet of gas per hour is required as specified in § 60.5390(a).

(2) You own or operate a pneumatic controller affected facility located at a natural gas processing plant and your pneumatic controller is driven by a gas other than natural gas and therefore emits zero natural gas.

(3) * * *

(4) You must tag each new pneumatic controller affected facility according to the requirements of § 60.5390(b)(2) or (c)(2).

* * * * *

(e) [Reserved]

* * * * *

(h) For each storage vessel affected facility that is subject to § 60.5395(d), you must comply with paragraphs (h)(1) through (5) of this section.

(1) You must determine the VOC emission rate within 30 days after startup. You must use good engineering practices to minimize emissions during the 30-day period.

(2) You must reduce VOC emissions by 95.0 percent or greater within 60 days after startup or by April 15, 2014, whichever is later.

(3) If you use a control device to reduce emissions, or if you route emissions to a flow line, you must demonstrate initial compliance by meeting the requirements in paragraphs (h)(3)(i) and (ii) of this section. For a Group 1 storage vessel affected facility, you must demonstrate initial compliance within 30 days after an event (as provided in § 60.5395(b)) or by April 15, 2014, whichever is later. For a Group 2 storage vessel affected facility, you must demonstrate initial compliance within 60 days after startup or by April 15, 2014, whichever is later.

(i) You must equip the storage vessel with a cover that meets the requirements of § 60.5411(b) and is connected through a closed vent system that meets the requirements of § 60.5411(c).

(ii) You must route the closed vent system to a control device that meets the conditions specified in § 60.5412(c) and (d) or to a flow line, as defined in § 60.5430.

(4) You must submit the information required for your storage vessel affected facility in paragraphs (h)(4)(i) through (iii) of this section in the initial annual report required in § 60.5420(b).

(i) The results of the emissions determination conducted under § 60.5395(b) or (c), as applicable, and the methodology used to determine emissions.

(ii) A statement that you have met the requirements of paragraph (h)(2) of this section.

(iii) A statement that you have met the emissions standards in § 60.5395(d).

(5) You must maintain the records required for your storage vessel affected facility, as specified in § 60.5420(c)(5) for each storage vessel affected facility.

(i) For each Group 1 storage vessel, you must submit a notification identifying each storage vessel, including its location by October 15, 2013. If you have an event that results in VOC emissions from the Group 1 storage vessel equal to or greater than 6 tpy after April 12, 2013, as specified in § 60.5395(b), you must comply with paragraph (h) of this section.

■ 7. Section 60.5411 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraph (a) introductory text;

■ c. Revising paragraph (a)(1);

■ d. Revising paragraph (a)(3)(i)(A);

■ e. Revising paragraph (b) introductory text;

■ f. Revising paragraph (b)(1);

■ g. Revising paragraph (b)(2)(iv);

■ h. Adding paragraph (b)(3); and

■ i. Adding paragraph (c).

The revisions and additions read as follows:

§ 60.5411 What additional requirements must I meet to determine initial compliance for my covers and closed vent systems routing materials from storage vessels and centrifugal compressor wet seal degassing systems?

* * * * *

(a) *Closed vent system requirements for centrifugal compressor wet seal degassing systems.* (1) You must design

the closed vent system to route all gases, vapors, and fumes emitted from the material in the wet seal fluid degassing system to a control device that meets the requirements specified in § 60.5412(a) through (c).

* * * * *

(3) * * *

(i) * * *

(A) You must properly install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that could divert the stream away from the control device or flow line to the atmosphere that is capable of taking periodic readings as specified in § 60.5416(a)(4) and sounds an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device to the atmosphere.

* * * * *

(b) *Cover requirements for storage vessels and centrifugal compressor wet seal degassing systems.* (1) The cover and all openings on the cover (*e.g.,* access hatches, sampling ports, pressure relief valves and gauge wells) shall form a continuous barrier over the entire surface area of the liquid in the storage vessel or wet seal fluid degassing system.

(2) * * *

(iv) To vent liquids, gases, or fumes from the unit through a closed-vent system to a control device designed and operated in accordance with the requirements of paragraph (a) of this section or to a flow line, as defined in § 60.5430.

(3) Each storage vessel thief hatch shall be weighted and properly seated. You must select gasket material for the hatch based on composition of the fluid in the storage vessel and weather conditions.

(c) *Closed vent system requirements for storage vessel affected facilities using a control device or routing emissions to a flow line.* (1) You must design the closed vent system to route all gases, vapors, and fumes emitted from the material in the storage vessel to a control device that meets the requirements specified in § 60.5412(c) and (d), or to a flow line, as defined in § 60.5430.

(2) You must design and operate the closed vent system with no detectable emissions, as determined using olfactory, visual and auditory inspections.

(3) You must meet the requirements specified in paragraphs (c)(3)(i) and (ii) of this section if the closed vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device or to a flow line, as defined in § 60.5430.

(i) Except as provided in paragraph (c)(3)(ii) of this section, you must comply with either paragraph (c)(3)(i)(A) or (B) of this section for each bypass device.

(A) You must properly install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that could divert the stream away from the control device or flow line to the atmosphere that sounds an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device or flow line to the atmosphere.

(B) You must secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (c)(3)(i) of this section.

■ 8. Section 60.5412 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (a)(1) introductory text;

■ c. Revising paragraph (a)(2);

■ d. Revising paragraph (b);

■ e. Revising paragraph (c) introductory text;

■ f. Revising paragraph (c)(1); and

■ g. Adding paragraph (d).

The revisions and addition read as follows:

§ 60.5412 What additional requirements must I meet for determining initial compliance with control devices used to comply with the emission standards for my storage vessel or centrifugal compressor affected facility?

* * * * *

(a) Each control device used to meet the emission reduction standard in § 60.5380(a)(1) for your centrifugal compressor affected facility, must be installed according to paragraphs (a)(1) through (3) of this section. As an alternative, for a centrifugal compressor affected facility, you may install a control device model tested under § 60.5413(d), which meets the criteria in § 60.5413(d)(11) and § 60.5413(e).

(1) Each enclosed combustion device (e.g., thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) must be designed and operated in accordance with one of the performance requirements specified in paragraphs (a)(1)(i) through (iv) of this section.

* * * * *

(2) Each vapor recovery device (e.g., carbon adsorption system or condenser) or other non-destructive control device must be designed and operated to reduce the mass content of VOC in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 60.5413. As an alternative to the performance testing requirements, you may demonstrate initial compliance by conducting a design analysis for vapor recovery devices according to the requirements of § 60.5413(c).

* * * * *

(b) You must operate each control device installed on your centrifugal compressor affected facility in accordance with the requirements specified in paragraphs (b)(1) and (2) of this section.

(1) You must operate each control device used to comply with this subpart at all times when gases, vapors, and fumes are vented from the wet seal fluid degassing system affected facility, as required under § 60.5380(a), through the closed vent system to the control device. You may vent more than one affected facility to a control device used to comply with this subpart.

(2) For each control device monitored in accordance with the requirements of § 60.5417(a) through (g), you must demonstrate compliance according to the requirements of § 60.5415(b)(2), as applicable.

(c) For each carbon adsorption system used as a control device to meet the requirements of paragraph (a)(2) or (d)(2) of this section, you must manage the carbon in accordance with the requirements specified in paragraphs (c)(1) or (2) of this section.

(1) Following the initial startup of the control device, you must replace all carbon in the control device with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established according to § 60.5413(c)(2) or (3) or according to the design analysis in paragraph (d)(2) of this section, for the carbon adsorption system. You must maintain records identifying the schedule for replacement and records of each carbon replacement as required in § 60.5420(c)(10) and (13).

* * * * *

(d) Each control device used to meet the emission reduction standard in § 60.5395(d) for your storage vessel affected facility, must be installed according to paragraphs (d)(1) through (3) of this section, as applicable. As an alternative, you may install a control device model tested under § 60.5413(d), which meets the criteria in § 60.5413(d)(11) and § 60.5413(e).

(1) Each enclosed combustion device (*e.g.,* thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) must be designed to reduce the mass content of VOC emissions by 95.0 percent or greater. You must follow the requirements in paragraphs (d)(1)(i) through (iii) of this section.

(i) Ensure that each enclosed combustion device is maintained in a leak free condition.

(ii) Install and operate a continuous burning pilot flame.

(iii) Operate the enclosed combustion device with no visible emissions, except for periods not to exceed a total of one minute during any 15 minute period. A visible emissions test using section 11 of EPA Method 22, 40 CFR part 60, Appendix A, must be performed at least once every calendar month, separated by at least 15 days between each test. The observation period shall be 15 minutes. Devices failing the visible emissions test must follow manufacturer's repair instructions, if available, or best combustion engineering practice as outlined in the unit inspection and maintenance plan, to return the unit to compliant operation. All inspection, repair and maintenance activities for each unit must be recorded in a maintenance and repair log and must be available on-site for inspection. Following return to operation from maintenance or repair activity, each device must pass a Method 22, 40 CFR part 60, Appendix A, visual observation as described in this paragraph.

(2) Each vapor recovery device (*e.g.,* carbon adsorption system or condenser) or other non-destructive control device must be designed and operated to reduce the mass content of VOC in the gases vented to the device by 95.0 percent by weight or greater. A carbon replacement schedule must be included in the design of the carbon adsorption system.

(3) You must operate each control device used to comply with this subpart at all times when gases, vapors, and fumes are vented from the storage vessel affected facility through the closed vent system to the control device. You may vent more than one affected facility to a control device used to comply with this subpart.

■ 9. Section 60.5413 is amended by:

■ a. Revising the introductory text;

■ b. Revising paragraph (a)(7);

■ c. Revising paragraph (d); and

■ d. Adding paragraph (e).

■ The revisions and addition read as follows:

§ 60.5413 What are the performance testing procedures for control devices used to demonstrate compliance at my storage vessel or centrifugal compressor affected facility?

This section applies to the performance testing of control devices used to demonstrate compliance with the emissions standards for your centrifugal compressor affected facility. You must demonstrate that a control device achieves the performance requirements of § 60.5412(a) using the performance test methods and procedures specified in this section. For condensers, you may use a design analysis as specified in paragraph (c) of this section in lieu of complying with paragraph (b) of this section. In addition, this section contains the requirements for enclosed combustion device performance tests conducted by the manufacturer applicable to both storage vessel and centrifugal compressor affected facilities.

(a) * * *

(7) A control device whose model can be demonstrated to meet the performance requirements of § 60.5412(a) through a performance test conducted by the manufacturer, as specified in paragraph (d) of this section.

* * * * *

(d) *Performance testing for combustion control devices—manufacturers' performance test.* (1) This paragraph applies to the performance testing of a combustion control device conducted by the device manufacturer. The manufacturer must demonstrate that a specific model of control device achieves the performance requirements in paragraph (d)(11) of this section by conducting a performance test as specified in paragraphs (d)(2) through (10) of this section. You must submit a test report for each combustion control device in accordance with the requirements in paragraph (d)(12) of this section.

(2) Performance testing must consist of three one-hour (or longer) test runs for each of the four firing rate settings specified in paragraphs (d)(2)(i) through (iv) of this section, making a total of 12 test runs per test. Propene (propylene) gas must be used for the testing fuel. All fuel analyses must be performed by an independent third-party laboratory (not affiliated with the control device manufacturer or fuel supplier).

(i) 90–100 percent of maximum design rate (fixed rate).

(ii) 70–100–70 percent (ramp up, ramp down). Begin the test at 70 percent of the maximum design rate. During the first 5 minutes, incrementally ramp the firing rate to 100 percent of the maximum design rate. Hold at 100 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to 70 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iii) 30–70–30 percent (ramp up, ramp down). Begin the test at 30 percent of the maximum design rate. During the first 5 minutes, incrementally ramp the firing rate to 70 percent of the maximum design rate. Hold at 70 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to 30 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iv) 0–30–0 percent (ramp up, ramp down). Begin the test at the minimum firing rate. During the first 5 minutes, incrementally ramp the firing rate to 30 percent of the maximum design rate. Hold at 30 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to the minimum firing rate. Repeat three more times for a total of 60 minutes of sampling.

(3) All models employing multiple enclosures must be tested simultaneously and with all burners operational. Results must be reported for each enclosure individually and for the average of the emissions from all interconnected combustion enclosures/chambers. Control device operating data must be collected continuously throughout the performance test using an electronic Data Acquisition System. A graphic presentation or strip chart of the control device operating data and emissions test data must be included in the test report in accordance with paragraph (d)(12) of this section. Inlet fuel meter data may be manually recorded provided that all inlet fuel data readings are included in the final report.

(4) Inlet testing must be conducted as specified in paragraphs (d)(4)(i) through (ii) of this section.

(i) The inlet gas flow metering system must be located in accordance with Method 2A, 40 CFR part 60, appendix A–1, (or other approved procedure) to measure inlet gas flow rate at the control device inlet location. You must position the fitting for filling fuel sample containers a minimum of eight pipe diameters upstream of any inlet gas flow monitoring meter.

(ii) Inlet flow rate must be determined using Method 2A, 40 CFR part 60, appendix A–1. Record the start and stop reading for each 60-minute THC test. Record the gas pressure and temperature at 5-minute intervals throughout each 60-minute test.

(5) Inlet gas sampling must be conducted as specified in paragraphs (d)(5)(i) through (ii) of this section.

(i) At the inlet gas sampling location, securely connect a Silonite-coated stainless steel evacuated canister fitted with a flow controller sufficient to fill the canister over a 3-hour period. Filling must be conducted as specified in paragraphs (d)(5)(i)(A) through (C) of this section.

(A) Open the canister sampling valve at the beginning of each test run, and close the canister at the end of each test run.

(B) Fill one canister across the three test runs such that one composite fuel sample exists for each test condition.

(C) Label the canisters individually and record sample information on a chain of custody form.

(ii) Analyze each inlet gas sample using the methods in paragraphs (d)(5)(ii)(A) through (C) of this section. You must include the results in the test report required by paragraph (d)(12) of this section.

(A) Hydrocarbon compounds containing between one and five atoms of carbon plus benzene using ASTM D1945–03.

(B) Hydrogen (H_2), carbon monoxide (CO), carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2) using ASTM D1945–03.

(C) Higher heating value using ASTM D3588–98 or ASTM D4891

89.

(6) Outlet testing must be conducted in accordance with the criteria in paragraphs (d)(6)(i) through (v) of this section.

(i) Sample and flow rate must be measured in accordance with paragraphs (d)(6)(i)(A) through (B) of this section.

(A) The outlet sampling location must be a minimum of four equivalent stack diameters downstream from the highest peak flame or any other flow disturbance, and a minimum of one equivalent stack diameter upstream of the exit or any other flow disturbance. A minimum of two sample ports must be used.

(B) Flow rate must be measured using Method 1, 40 CFR part 60, appendix A–1 for determining flow measurement traverse point location, and Method 2, 40 CFR part 60, appendix A–1 for measuring duct velocity. If low flow conditions are encountered (*i.e.*, velocity pressure differentials less than 0.05 inches of water) during the performance test, a more sensitive manometer must be used to obtain an accurate flow profile.

(ii) Molecular weight and excess air must be determined as specified in paragraph (d)(7) of this section.

(iii) Carbon monoxide must be determined as specified in paragraph (d)(8) of this section.

(iv) THC must be determined as specified in paragraph (d)(9) of this section.

(v) Visible emissions must be determined as specified in paragraph (d)(10) of this section.

(7) Molecular weight and excess air determination must be performed as specified in paragraphs (d)(7)(i) through (iii) of this section.

(i) An integrated bag sample must be collected during the Method 4, 40 CFR part 60, appendix A–3, moisture test following the procedure specified in (d)(7)(i)(A) through (B) of this section. Analyze the bag sample using a gas chromatograph-thermal conductivity detector (GC–TCD) analysis meeting the criteria in paragraphs (d)(7)(i)(C) through (D) of this section.

(A) Collect the integrated sample throughout the entire test, and collect representative volumes from each traverse location.

(B) Purge the sampling line with stack gas before opening the valve and beginning to fill the bag. Clearly label each bag and record sample information on a chain of custody form.

(C) The bag contents must be vigorously mixed prior to the gas chromatograph analysis.

(D) The GC–TCD calibration procedure in Method 3C, 40 CFR part 60, appendix A, must be modified by using EPA Alt–045 as follows: For the initial calibration, triplicate injections of any single concentration must agree within 5 percent of their mean to be valid. The calibration response factor for a single concentration re-check must be within 10 percent of the original calibration response factor for that concentration. If this criterion is not met, repeat the initial calibration using at least three concentration levels.

(ii) Calculate and report the molecular weight of oxygen, carbon dioxide, methane, and nitrogen in the integrated bag sample and include in the test report specified in paragraph (d)(12) of this section. Moisture must be determined using Method 4, 40 CFR part 60, appendix A–3. Traverse both ports with the Method 4, 40 CFR part 60, appendix A–3, sampling train during each test run. Ambient air must not be introduced into the Method 3C, 40 CFR part 60, appendix A–2, integrated bag sample during the port change.

(iii) Excess air must be determined using resultant data from the EPA Method 3C tests and EPA Method 3B, 40 CFR part 60, appendix A, equation 3B–1.

(8) Carbon monoxide must be determined using Method 10, 40 CFR part 60, appendix A. Run the test simultaneously with Method 25A, 40 CFR part 60, appendix A–7 using the same sampling points. An instrument range of 0–10 parts per million by volume-dry (ppmvd) is recommended.

(9) Total hydrocarbon determination must be performed as specified by in paragraphs (d)(9)(i) through (vii) of this section.

(i) Conduct THC sampling using Method 25A, 40 CFR part 60, appendix A–7, except that the option for locating the probe in the center 10 percent of the stack is not allowed. The THC probe must be traversed to 16.7 percent, 50 percent, and 83.3 percent of the stack diameter during each test run.

(ii) A valid test must consist of three Method 25A, 40 CFR part 60, appendix A–7, tests, each no less than 60 minutes in duration.

(iii) A 0–10 parts per million by volume-wet (ppmvw) (as propane) measurement range is preferred; as an alternative a 0–30 ppmvw (as carbon) measurement range may be used.

(iv) Calibration gases must be propane in air and be certified through EPA Protocol 1—''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, as amended August 25, 1999, EPA–600/R–97/121(or more recent if updated since 1999).

(v) THC measurements must be reported in terms of ppmvw as propane.

(vi) THC results must be corrected to 3 percent CO_2, as measured by Method 3C, 40 CFR part 60, appendix A–2. You must use the following equation for this diluent concentration correction:

$$Ccorr = Cmeas\left(\frac{3}{CO_{2meas}}\right)$$

Where:

C_{meas} = The measured concentration of the pollutant.

CO_{2meas} = The measured concentration of the CO_2 diluent.

3 = The corrected reference concentration of CO_2 diluent.

C_{corr} = The corrected concentration of the pollutant.

(vii) Subtraction of methane or ethane from the THC data is not allowed in determining results.

(10) Visible emissions must be determined using Method 22, 40 CFR part 60, appendix A. The test must be performed continuously during each test run. A digital color photograph of the exhaust point, taken from the

position of the observer and annotated with date and time, must be taken once per test run and the 12 photos included in the test report specified in paragraph (d)(12) of this section.

(11) *Performance test criteria.* (i) The control device model tested must meet the criteria in paragraphs (d)(11)(i)(A) through (D) of this section. These criteria must be reported in the test report required by paragraph (d)(12) of this section.

(A) Method 22, 40 CFR part 60, appendix A, results under paragraph (d)(10) of this section with no indication of visible emissions.

(B) Average Method 25A, 40 CFR part 60, appendix A, results under paragraph (d)(9) of this section equal to or less than 10.0 ppmvw THC as propane corrected to 3.0 percent CO_2.

(C) Average CO emissions determined under paragraph (d)(8) of this section equal to or less than 10 parts ppmvd, corrected to 3.0 percent CO_2.

(D) Excess combustion air determined under paragraph (d)(7) of this section equal to or greater than 150 percent.

(ii) The manufacturer must determine a maximum inlet gas flow rate which must not be exceeded for each control device model to achieve the criteria in paragraph (d)(11)(iii) of this section. The maximum inlet gas flow rate must be included in the test report required by paragraph (d)(12) of this section.

(iii) A control device meeting the criteria in paragraph (d)(11)(i)(A) through (D) of this section must demonstrate a destruction efficiency of 95 percent for VOC regulated under this subpart.

(12) The owner or operator of a combustion control device model tested under this section must submit the information listed in paragraphs (d)(12)(i) through (vi) in the test report required by this section.

(i) A full schematic of the control device and dimensions of the device components.

(ii) The maximum net heating value of the device.

(iii) The test fuel gas flow range (in both mass and volume). Include the maximum allowable inlet gas flow rate.

(iv) The air/stream injection/assist ranges, if used.

(v) The test conditions listed in paragraphs (d)(12)(v)(A) through (O) of this section, as applicable for the tested model.

(A) Fuel gas delivery pressure and temperature.

(B) Fuel gas moisture range.

(C) Purge gas usage range.

(D) Condensate (liquid fuel) separation range.

(E) Combustion zone temperature range. This is required for all devices that measure this parameter.

(F) Excess combustion air range.

(G) Flame arrestor(s).

(H) Burner manifold.

(I) Pilot flame indicator.

(J) Pilot flame design fuel and calculated or measured fuel usage.

(K) Tip velocity range.

(L) Momentum flux ratio.

(M) Exit temperature range.

(N) Exit flow rate.

(O) Wind velocity and direction.

(vi) The test report must include all calibration quality assurance/quality control data, calibration gas values, gas cylinder certification, strip charts, or other graphic presentations of the data annotated with test times and calibration values.

(e) *Continuous compliance for combustion control devices tested by the manufacturer in accordance with paragraph (d) of this section.* This paragraph applies to the demonstration of compliance for a combustion control device tested under the provisions in paragraph (d) of this section. Owners or operators must demonstrate that a control device achieves the performance requirements in (d)(11) of this section by installing a device tested under paragraph (d) of this section and complying with the criteria specified in paragraphs (e)(1) through (6) of this section.

(1) The inlet gas flow rate must be equal to or less than the maximum specified by the manufacturer.

(2) A pilot flame must be present at all times of operation.

(3) Devices must be operated with no visible emissions, except for periods not to exceed a total of 2 minutes during any hour. A visible emissions test using Method 22, 40 CFR part 60, appendix A, must be performed each calendar quarter. The observation period must be 1 hour and must be conducted according to EPA Method 22, 40 CFR part 60, appendix A.

(4) Devices failing the visible emissions test must follow manufacturer's repair instructions, if available, or best combustion engineering practice as outlined in the unit inspection and maintenance plan, to return the unit to compliant operation. All repairs and maintenance activities for each unit must be recorded in a maintenance and repair log and must be available on site for inspection.

(5) Following return to operation from maintenance or repair activity, each device must pass an EPA Method 22, 40 CFR part 60, Appendix A, visual observation as described in paragraph (e)(3) of this section.

(6) If the owner or operator operates a combustion control device model tested under this section, an electronic copy of the performance test results required by this section shall be submitted via email to *Oil_and_Gas_PT@EPA.GOV* unless the test results for that model of combustion control device are posted at the following Web site: *epa.gov/airquality/oilandgas/*.

■ 10. Section 60.5415 is amended by:

■ a. Revising paragraph (b) introductory text;

■ b. Revising paragraph (b)(2);

■ c. Revising paragraph (e) introductory text;

■ d. Removing and reserving paragraphs (e)(1) and (2);

■ e. Adding paragraph (e)(3); and

■ f. Revising paragraph (h)(1) introductory text.

The revisions and addition read as follows:

§ 60.5415 How do I demonstrate continuous compliance with the standards for my gas well affected facility, my centrifugal compressor affected facility, my stationary reciprocating compressor affected facility, my pneumatic controller affected facility, my storage vessel affected facility, and my affected facilities at onshore natural gas processing plants?

* * * * *

(b) For each centrifugal compressor affected facility, you must demonstrate continuous compliance according to paragraph (b)(1) through (3) of this section.

* * * * *

(2) For each control device used to reduce emissions, you must demonstrate continuous compliance with the performance requirements of § 60.5412(a) using the procedures specified in paragraphs (b)(2)(i) through (vii) of this section. If you use a condenser as the control device to achieve the requirements specified in § 60.5412(a)(2), you must demonstrate compliance according to paragraph (b)(2)(viii) of this section. You may switch between compliance with paragraphs (b)(2)(i) through (vii) of this section and compliance with paragraph (b)(2)(viii) of this section only after at least 1 year of operation in compliance with the selected approach. You must provide notification of such a change in the compliance method in the next Annual Report, as required in § 60.5420(b), following the change.

(i) You must operate below (or above) the site specific maximum (or minimum) parameter value established according to the requirements of § 60.5417(f)(1).

(ii) You must calculate the daily average of the applicable monitored

parameter in accordance with § 60.5417(e) except that the inlet gas flow rate to the control device must not be averaged.

(iii) Compliance with the operating parameter limit is achieved when the daily average of the monitoring parameter value calculated under paragraph (b)(2)(ii) of this section is either equal to or greater than the minimum monitoring value or equal to or less than the maximum monitoring value established under paragraph (b)(2)(i) of this section. When performance testing of a combustion control device is conducted by the device manufacturer as specified in § 60.5413(d), compliance with the operating parameter limit is achieved when the criteria in § 60.5413(e) are met.

(iv) You must operate the continuous monitoring system required in § 60.5417 at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments). A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(v) You may not use data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other required data collection periods to assess the operation of the control device and associated control system.

(vi) Failure to collect required data is a deviation of the monitoring requirements, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required quality monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments).

(vii) If you use a combustion control device to meet the requirements of § 60.5412(a) and you demonstrate compliance using the test procedures specified in § 60.5413(b), you must comply with paragraphs (b)(2)(vii)(A) through (D) of this section.

(A) A pilot flame must be present at all times of operation.

(B) Devices must be operated with no visible emissions, except for periods not to exceed a total of 2 minutes during any hour. A visible emissions test using Method 22, 40 CFR part 60, appendix A, must be performed each calendar quarter. The observation period must be 1 hour and must be conducted according to EPA Method 22, 40 CFR part 60, appendix A.

(C) Devices failing the visible emissions test must follow manufacturer's repair instructions, if available, or best combustion engineering practice as outlined in the unit inspection and maintenance plan, to return the unit to compliant operation. All repairs and maintenance activities for each unit must be recorded in a maintenance and repair log and must be available on site for inspection.

(D) Following return to operation from maintenance or repair activity, each device must pass a Method 22, 40 CFR part 60, Appendix A, visual observation as described in paragraph (b)(2)(vii)(B) of this section.

(viii) If you use a condenser as the control device to achieve the percent reduction performance requirements specified in § 60.5412(a)(2), you must demonstrate compliance using the procedures in paragraphs (b)(2)(viii)(A) through (E) of this section.

(A) You must establish a site-specific condenser performance curve according to § 60.5417(f)(2).

(B) You must calculate the daily average condenser outlet temperature in accordance with § 60.5417(e).

(C) You must determine the condenser efficiency for the current operating day using the daily average condenser outlet temperature calculated under paragraph (b)(2)(viii)(B) of this section and the condenser performance curve established under paragraph (b)(2)(viii)(A) of this section.

(D) Except as provided in paragraphs (b)(2)(viii)(D)(*1*) and (*2*) of this section, at the end of each operating day, you must calculate the 365-day rolling average TOC emission reduction, as appropriate, from the condenser efficiencies as determined in paragraph (b)(2)(viii)(C) of this section.

(*1*) After the compliance dates specified in § 60.5370, if you have less than 120 days of data for determining average TOC emission reduction, you must calculate the average TOC emission reduction for the first 120 days of operation after the compliance dates. You have demonstrated compliance with the overall 95.0 percent reduction requirement if the 120-day average TOC emission reduction is equal to or greater than 95.0 percent.

(*2*) After 120 days and no more than 364 days of operation after the compliance date specified in § 60.5370, you must calculate the average TOC emission reduction as the TOC emission reduction averaged over the number of days between the current day and the applicable compliance date. You have demonstrated compliance with the overall 95.0 percent reduction requirement, if the average TOC emission reduction is equal to or greater than 95.0 percent.

(E) If you have data for 365 days or more of operation, you have demonstrated compliance with the TOC emission reduction if the rolling 365-day average TOC emission reduction calculated in paragraph (b)(2)(viii)(D) of this section is equal to or greater than 95.0 percent.

* * * * *

(e) You must demonstrate continuous compliance according to paragraph (e)(3) of this section for each storage vessel affected facility, for which you are using a control device or routing emissions to a flow line to meet the requirement of § 60.5395(d)(1).

(1) [Reserved]

(2) [Reserved]

(3) For each storage vessel affected facility subject to § 60.5395(d)(1), you must comply with paragraphs (e)(3)(i) and (ii) of this section.

(i) You must reduce VOC emissions by 95.0 percent or greater.

(ii) You must demonstrate continuous compliance with the performance requirements of § 60.5412(d) for each storage vessel affected facility using the procedure specified in paragraph (e)(3)(ii)(A) and either (e)(3)(ii)(B) or (e)(3)(ii)(C) of this section.

(A) You must comply with § 60.5416(c) for each cover and closed vent system.

(B) You must comply with § 60.5417(h) for each control device.

(C) Each closed vent system that routes emissions to a flow line, as defined in § 60.5430, must be operational 95 percent of the year or greater.

* * * * *

(h) * * *

(1) To establish the affirmative defense in any action to enforce such a standard, you must timely meet the reporting requirements in § 60.5415(h)(2), and must prove by a preponderance of evidence that:

* * * * *

■ 11. Section 60.5416 is amended by:
■ a. Revising the introductory text;
■ b. Revising paragraph (a) introductory text;
■ c. Revising paragraph (a)(1)(ii);
■ d. Revising paragraph (a)(2)(iii);
■ e. Revising paragraph (a)(3)(ii);
■ f. Revising paragraph (b) introductory text,
■ g. Revising paragraph (b)(9) introductory text;
■ h. Revising paragraph (b)(11); and
■ i. Adding paragraph (c).

The revisions and addition read as follows:

§ 60.5416 What are the initial and continuous cover and closed vent system inspection and monitoring requirements for my storage vessel and centrifugal compressor affected facility?

For each closed vent system or cover at your storage vessel or centrifugal compressor affected facility, you must comply with the applicable requirements of paragraphs (a) through (c) of this section.

(a) *Inspections for closed vent systems and covers installed on each centrifugal compressor affected facility.* Except as provided in paragraphs (b)(11) and (12) of this section, you must inspect each closed vent system according to the procedures and schedule specified in paragraphs (a)(1) and (2) of this section, inspect each cover according to the procedures and schedule specified in paragraph (a)(3) of this section, and inspect each bypass device according to the procedures of paragraph (a)(4) of this section.

(1) * * *

(ii) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in piping; loose connections; liquid leaks; or broken or missing caps or other closure devices. You must monitor a component or connection using the test methods and procedures in paragraph (b) of this section to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced or the connection is unsealed. You must maintain records of the inspection results as specified in § 60.5420(c)(6).

(2) * * *

(iii) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork; loose connections; liquid leaks; or broken or missing caps or other closure devices. You must maintain records of the inspection results as specified in § 60.5420(c)(6).

(3) * * *

(ii) You must initially conduct the inspections specified in paragraph (a)(3)(i) of this section following the installation of the cover. Thereafter, you must perform the inspection at least once every calendar year, except as provided in paragraphs (b)(11) and (12) of this section. You must maintain records of the inspection results as specified in § 60.5420(c)(7).

* * * * *

(b) *No detectable emissions test methods and procedures.* If you are required to conduct an inspection of a closed vent system or cover at your centrifugal compressor affected facility as specified in paragraphs (a)(1), (2), or (3) of this section, you must meet the requirements of paragraphs (b)(1) through (13) of this section.

* * * * *

(9) *Repairs.* In the event that a leak or defect is detected, you must repair the leak or defect as soon as practicable according to the requirements of paragraphs (b)(9)(i) and (ii) of this section, except as provided in paragraph (b)(10) of this section.

* * * * *

(11) *Unsafe to inspect requirements.* You may designate any parts of the closed vent system or cover as unsafe to inspect if the requirements in paragraphs (b)(11)(i) and (ii) of this section are met. Unsafe to inspect parts are exempt from the inspection requirements of paragraphs (a)(1) through (3) of this section.

(i) You determine that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraphs (a)(1), (2), or (3) of this section.

(ii) You have a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

* * * * *

(c) *Cover and closed vent system inspections for storage vessel affected facilities.* If you install a control device or route emissions to a flow line, you must inspect each closed vent system according to the procedures and schedule specified in paragraphs (c)(1) of this section, inspect each cover according to the procedures and schedule specified in paragraph (c)(2) of this section, and inspect each bypass device according to the procedures of paragraph (c)(3) of this section. You must also comply with the requirements of (c)(4) through (8) of this section.

(1) For each closed vent system, you must conduct an inspection at least once every calendar month as specified in paragraphs (c)(1)(i) through (iii) of this section.

(i) You must maintain records of the inspection results as specified in § 60.5420(c)(6).

(ii) Conduct olfactory, visual and auditory inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in piping; loose connections; liquid leaks; or broken or missing caps or other closure devices.

(iii) Monthly inspections must be separated by at least 14 calendar days.

(2) For each cover, you must conduct inspections at least once every calendar month as specified in paragraphs (c)(2)(i) through (iii) of this section.

(i) You must maintain records of the inspection results as specified in § 60.5420(c)(7).

(ii) Conduct olfactory, visual and auditory inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover, or between the cover and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the case where the storage vessel is buried partially or entirely underground, you must inspect only those portions of the cover that extend to or above the ground surface, and those connections that are on such portions of the cover (e.g., fill ports, access hatches, gauge wells, etc.) and can be opened to the atmosphere.

(iii) Monthly inspections must be separated by at least 14 calendar days.

(3) For each bypass device, except as provided for in § 60.5411, you must meet the requirements of paragraphs (c)(3)(i) or (ii) of this section.

(i) Set the flow indicator to sound an alarm at the inlet to the bypass device when the stream is being diverted away from the control device to the atmosphere.

(ii) If the bypass device valve installed at the inlet to the bypass device is secured in the non-diverting position using a car-seal or a lock-and-key type configuration, visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass device. You must maintain records of the inspections according to § 60.5420(c)(8).

(4) *Repairs.* In the event that a leak or defect is detected, you must repair the leak or defect as soon as practicable according to the requirements of paragraphs (c)(4)(i) through (iii) of this

section, except as provided in paragraph (c)(5) of this section.

(i) A first attempt at repair must be made no later than 5 calendar days after the leak is detected.

(ii) Repair must be completed no later than 30 calendar days after the leak is detected.

(iii) Grease or another applicable substance must be applied to deteriorating or cracked gaskets to improve the seal while awaiting repair.

(5) *Delay of repair.* Delay of repair of a closed vent system or cover for which leaks or defects have been detected is allowed if the repair is technically infeasible without a shutdown, or if you determine that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. You must complete repair of such equipment by the end of the next shutdown.

(6) *Unsafe to inspect requirements.* You may designate any parts of the closed vent system or cover as unsafe to inspect if the requirements in paragraphs (c)(6)(i) and (ii) of this section are met. Unsafe to inspect parts are exempt from the inspection requirements of paragraphs (c)(1) and (2) of this section.

(i) You determine that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraphs (c)(1) or (2) of this section.

(ii) You have a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(7) *Difficult to inspect requirements.* You may designate any parts of the closed vent system or cover as difficult to inspect, if the requirements in paragraphs (c)(7)(i) and (ii) of this section are met. Difficult to inspect parts are exempt from the inspection requirements of paragraphs (c)(1) and (2) of this section.

(i) You determine that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface.

(ii) You have a written plan that requires inspection of the equipment at least once every 5 years.

(8) *Records.* Records shall be maintained as specified in this section and in § 60.5420(c)(12).

■ 12. Section 60.5417 is amended by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (b) introductory text;

■ c. Revising paragraph (c) introductory text;

■ d. Revising paragraphs (d)(1)(viii)(A) and (B);

■ e. Revising paragraph (d)(2);

■ f. Revising paragraph (f)(1)(iii);

■ g. Revising paragraph (g)(6)(ii); and

■ h. Adding paragraph (h).

The revisions and addition read as follows:

§ 60.5417 What are the continuous control device monitoring requirements for my storage vessel or centrifugal compressor affected facility?

* * * * *

(a) For each control device used to comply with the emission reduction standard for centrifugal compressor affected facilities in § 60.5380, you must install and operate a continuous parameter monitoring system for each control device as specified in paragraphs (c) through (g) of this section, except as provided for in paragraph (b) of this section. If you install and operate a flare in accordance with § 60.5412(a)(3), you are exempt from the requirements of paragraphs (e) and (f) of this section.

(b) You are exempt from the monitoring requirements specified in paragraphs (c) through (g) of this section for the control devices listed in paragraphs (b)(1) and (2) of this section.

* * * * *

(c) If you are required to install a continuous parameter monitoring system, you must meet the specifications and requirements in paragraphs (c)(1) through (4) of this section.

* * * * *

(d) * * *

(1) * * *

(viii) * * *

(A) The continuous monitoring system must measure gas flow rate at the inlet to the control device. The monitoring instrument must have an accuracy of ±2 percent or better. The flow rate at the inlet to the combustion device must not exceed the maximum or minimum flow rate determined by the manufacturer.

(B) A monitoring device that continuously indicates the presence of the pilot flame while emissions are routed to the control device.

(2) An organic monitoring device equipped with a continuous recorder that measures the concentration level of organic compounds in the exhaust vent stream from the control device. The monitor must meet the requirements of Performance Specification 8 or 9 of 40 CFR part 60, appendix B. You must install, calibrate, and maintain the monitor according to the manufacturer's specifications.

* * * * *

(f) * * *

(1) * * *

(iii) If you operate a control device where the performance test requirement was met under § 60.5413(d) to demonstrate that the control device achieves the applicable performance requirements specified in § 60.5412(a), then your control device inlet gas flow rate must not exceed the maximum or minimum inlet gas flow rate determined by the manufacturer.

* * * * *

(g) * * *

(6) * * *

(ii) Failure of the quarterly visible emissions test conducted under § 60.5413(e)(3) occurs.

(h) For each control device used to comply with the emission reduction standard in § 60.5395(d)(1) for your storage vessel affected facility, you must demonstrate continuous compliance according to paragraphs (h)(1) through (h)(3) of this section. You are exempt from the requirements of this paragraph if you install a control device model tested in accordance with § 60.5413(d)(2) through (10), which meets the criteria in § 60.5413(d)(11), the reporting requirement in § 60.5413(d)(12), and meet the continuous compliance requirement in § 60.5413(e).

(1) For each combustion device you must conduct inspections at least once every calendar month according to paragraphs (h)(1)(i) through (iv) of this section. Monthly inspections must be separated by at least 14 calendar days.

(i) Conduct visual inspections to confirm that the pilot is lit when vapors are being routed to the combustion device and that the continuous burning pilot flame is operating properly.

(ii) Conduct inspections to monitor for visible emissions from the combustion device using section 11 of EPA Method 22, 40 CFR part 60, Appendix A. The observation period shall be 15 minutes. Devices must be operated with no visible emissions, except for periods not to exceed a total of 1 minute during any 15 minute period.

(iii) Conduct olfactory, visual and auditory inspections of all equipment associated with the combustion device to ensure system integrity.

(iv) For any absence of pilot flame, or other indication of smoking or improper equipment operation (*e.g.,* visual, audible, or olfactory), you must ensure the equipment is returned to proper operation as soon as practicable after the event occurs. At a minimum, you must perform the procedures specified in paragraphs (h)(1)(iv)(A) and (B) of this section.

(A) You must check the air vent for obstruction. If an obstruction is

observed, you must clear the obstruction as soon as practicable.

(B) You must check for liquid reaching combustor.

(2) For each vapor recovery device, you must conduct inspections at least once every calendar month to ensure physical integrity of the control device according to the manufacturer's instructions. Monthly inspections must be separated by at least 14 calendar days.

(3) Each control device must be operated following the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions. Records of the manufacturer's written operating instructions, procedures, and maintenance schedule must be maintained onsite as specified in § 60.5420(c)(14).

■ 13. Section 60.5420 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (a)(1);

■ c. Adding paragraph (a)(3);

■ d. Revising paragraph (b) introductory text;

■ e. Revising paragraph (b)(3)(iii);

■ f. Revising paragraph (b)(5) introductory text;

■ g. Revising paragraph (b)(5)(i);

■ h. Revising paragraphs (b)(6)(i) and (ii);

■ i. Revising paragraphs (b)(7)(i) and (ii);

■ j. Adding paragraph (b)(8);

■ k. Revising paragraph (c) introductory text;

■ l. Revising paragraph (c)(1)(v);

■ m. Revising paragraph (c)(5) introductory text;

■ n. Revising paragraph (c)(5)(ii);

■ o. Adding paragraph (c)(5)(v);

■ p. Revising paragraphs (c)(6) through (11); and

■ q. Adding paragraphs (c)(12) through (14).

The revisions and additions read as follows:

§ 60.5420 What are my notification, reporting, and recordkeeping requirements?

(a) You must submit the notifications according to paragraphs (a)(1) through (3) of this section if you own or operate one or more of the affected facilities specified in § 60.5365 that was constructed, modified, or reconstructed during the reporting period.

(1) If you own or operate a gas well, pneumatic controller, centrifugal compressor, reciprocating compressor or storage vessel affected facility you are not required to submit the notifications required in § 60.7(a)(1), (3), and (4).

* * * * *

(3) You must submit a notification identifying each Group 1 storage vessel by October 15, 2013. The notification must contain the location of the storage vessel, in latitude and longitude coordinates in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983.

(b) *Reporting requirements.* You must submit annual reports containing the information specified in paragraphs (b)(1) through (6) of this section to the Administrator and performance test reports as specified in paragraph (b)(7) or (8) of this section. The initial annual report is due no later than 90 days after the end of the initial compliance period as determined according to § 60.5410. Subsequent annual reports are due no later than same date each year as the initial annual report. If you own or operate more than one affected facility, you may submit one report for multiple affected facilities provided the report contains all of the information required as specified in paragraphs (b)(1) through (6) of this section. Annual reports may coincide with title V reports as long as all the required elements of the annual report are included. You may arrange with the Administrator a common schedule on which reports required by this part may be submitted as long as the schedule does not extend the reporting period.

* * * * *

(3) * * *

(iii) If required to comply with § 60.5380(a)(1), the records specified in paragraphs (c)(6) through (14) of this section.

* * * * *

(5) For each pneumatic controller affected facility, the information specified in paragraphs (b)(5)(i) through (iii) of this section.

(i) An identification of each pneumatic controller constructed, modified or reconstructed during the reporting period, including the identification information specified in § 60.5390(b)(2) or § 60.5390(c)(2).

* * * * *

(6) * * *

(i) An identification, including the location, of each storage vessel affected facility constructed, modified or reconstructed during the reporting period. The location of the storage vessel shall be in latitude and longitude coordinates in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983.

(ii) Documentation of the VOC emission rate determination according to the requirements in § 60.5395(b) or (c) or as required in § 60.5395(d)(2).

* * * * *

(7) (i) Within 60 days after the date of completing each performance test (see § 60.8 of this part) as required by this subpart, except testing conducted by the manufacturer as specified in § 60.5413(d), you must submit the results of the performance tests required by this subpart to the EPA as follows. You must use the latest version of the EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*) existing at the time of the performance test to generate a submission package file, which documents the performance test. You must then submit the file generated by the ERT through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed by logging in to the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Only data collected using test methods supported by the ERT as listed on the ERT Web site are subject to this requirement for submitting reports electronically. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives) to EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including the confidential business information, to the delegated authority in the format specified by the delegated authority. For any performance test conducted using test methods that are not listed on the ERT Web site, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 60.4.

(ii) All reports, except as specified in paragraph (b)(8) of this section, required by this subpart not subject to the requirements in paragraph (a)(2)(i) of this section must be sent to the Administrator at the appropriate address listed in § 60.4 of this part. The Administrator or the delegated authority may request a report in any form suitable for the specific case (*e.g.,* by

commonly used electronic media such as Excel spreadsheet, on CD or hard copy).

(8) For enclosed combustors tested by the manufacturer in accordance with § 60.5413(d), an electronic copy of the performance test results required by § 60.5413(d) shall be submitted via email to *Oil_and_Gas_PT@EPA.GOV* unless the test results for that model of combustion control device are posted at the following Web site: *epa.gov/airquality/oilandgas/.*

(c) *Recordkeeping requirements.* You must maintain the records identified as specified in § 60.7(f) and in paragraphs (c)(1) through (14) of this section. All records must be maintained for at least 5 years.

(1) * * *

(v) For each gas well affected facility required to comply with both § 60.5375(a)(1) and (3), if you are using a digital photograph in lieu of the records required in paragraphs (c)(1)(i) through (iv) of this section, you must retain the records of the digital photograph as specified in § 60.5410(a)(4).

* * * * *

(5) Except as specified in paragraph (c)(5)(v) of this section, for each storage vessel affected facility, you must maintain the records identified in paragraphs (c)(5)(i) through (iv) of this section.

* * * * *

(ii) Records of each VOC emissions determination for each storage vessel affected facility required under § 60.5395(b), (c) and (d)(2), as applicable, including identification of the model or calculation methodology used to calculate the VOC emission rate.

* * * * *

(v) You must maintain records of the identification and location of each Group 1 storage vessel. If you have an event, as specified in § 60.5395(b)(2), that could reasonably be expected to increase VOC emissions from your Group 1 storage vessel, you must maintain records of the VOC emissions rate determination.

(6) Records of each closed vent system inspection required under § 60.5416(a)(1) for centrifugal compressors or § 60.5416(c)(1) for storage vessels.

(7) A record of each cover inspection required under § 60.5416(a)(3) for centrifugal compressors or § 60.5416(c)(2) for storage vessels.

(8) If you are subject to the bypass requirements of § 60.5416(a)(4) for centrifugal compressors or § 60.5416(c)(3) for storage vessels, a record of each inspection or a record each time the key is checked out or a record of each time the alarm is sounded.

(9) For each closed vent system used to comply with this subpart that must operate with no detectable emissions, a record of the monitoring conducted in accordance with § 60.5416(b).

(10) For each centrifugal compressor affected facility, records of the schedule for carbon replacement (as determined by the design analysis requirements of § 60.5413(c)(2) or (3)) and records of each carbon replacement as specified in § 60.5412(c)(1).

(11) For each centrifugal compressor subject to the control device requirements of § 60.5412(a), (b), and (c), records of minimum and maximum operating parameter values, continuous parameter monitoring system data, calculated averages of continuous parameter monitoring system data, results of all compliance calculations, and results of all inspections.

(12) For each cover and closed vent system installed on storage vessel affected facilities used to comply with § 60.5416(c), a record of all inspections.

(13) For each carbon adsorber installed on storage vessel affected facilities, records of the schedule for carbon replacement (as determined by the design analysis requirements of § 60.5412(d)(2)) and records of each carbon replacement as specified in § 60.5412(c)(1).

(14) For each storage vessel affected facility subject to the control device requirements of § 60.5412(c) and (d), you must maintain records of the inspections, including any corrective actions taken, the manufacturers' operating instructions, procedures and maintenance schedule as specified in § 60.5417(h). You must maintain records of EPA Method 22, 40 CFR part 60, Appendix A, section 11 results, which include: company, location, company representative (name of the person performing the observation), sky conditions, process unit (type of control device), clock start time, observation period duration (in minutes and seconds), accumulated emission time (in minutes and seconds), and clock end time. You may create your own form including the above information or use Figure 22–1 in EPA Method 22, 40 CFR part 60, Appendix A. Manufacturer's records must be maintained onsite.

■ 14. Section 60.5430 is amended by:

■ a. Adding, in alphabetical order, definitions for the terms ''condensate,'' ''Group 1 storage vessel,'' ''Group 2 storage vessel,'' ''intermediate hydrocarbon liquid'' and ''produced water;'' and

■ b. Revising the definition for ''storage vessel'' to read as follows:

§ 60.5430 What definitions apply to this subpart?

* * * * *

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature, pressure, or both, and remains liquid at standard conditions.

* * * * *

Group 1 storage vessel means a storage vessel, as defined in this section, that is constructed, modified or reconstructed on or after August 23, 2011, and before April 12, 2013.

Group 2 storage vessel means a storage vessel, as defined in this section, that is constructed, modified or reconstructed on or after April 12, 2013.

* * * * *

Intermediate hydrocarbon liquid means any naturally occurring, unrefined petroleum liquid.

* * * * *

Produced water means water that is extracted from the earth from an oil or natural gas production well, or that is separated from crude oil, condensate, or natural gas after extraction.

* * * * *

Storage vessel means a tank or other vessel that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support. The following are not considered storage vessels:

(1) Vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), and are intended to be located at a site for less than 180 consecutive days. If you do not keep or are not able to produce records, as required by § 60.5420(c)(5)(iv), showing that the vessel has been located at a site for less than 180 consecutive days, the vessel described herein is considered to be a storage vessel since the original vessel was first located at the site.

(2) Process vessels such as surge control vessels, bottoms receivers or knockout vessels.

(3) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere.

* * * * *

■ 15. Appendix to subpart OOOO of part 60 is amended by revising Tables 1 and 2 to read as follows:

TABLE 1 TO SUBPART OOOO OF PART 60—REQUIRED MINIMUM INITIAL SO_2 EMISSION REDUCTION EFFICIENCY (Z_i)

H_2S content of acid gas (Y), %	Sulfur feed rate (X), LT/D			
	2.0≤X≤5.0	5.0<X≤15.0	15.0<X≤300.0	X>300.0
Y≥50	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 99.9, whichever is smaller		
20≤Y<50	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 97.9, whichever is smaller		97.9
10≤Y<20	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 93.5, whichever is smaller	93.5	93.5
Y<10	79.0	79.0	79.0	79.0

TABLE 2 TO SUBPART OOOO OF PART 60—REQUIRED MINIMUM SO_2 EMISSION REDUCTION EFFICIENCY (Z_c)

H_2S content of acid gas (Y), %	Sulfur feed rate (X), LT/D			
	2.0≤X≤5.0	5.0<X≤15.0	15.0<X≤300.0	X>300.0
Y≥50	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 99.9, whichever is smaller		
20≤Y<50	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 97.5, whichever is smaller		97.5
10≤Y<20	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 90.8, whichever is smaller	90.8	90.8
Y<10	74.0	74.0	74.0	74.0

X = The sulfur feed rate from the sweetening unit (*i.e.,* the H_2S in the acid gas), expressed as sulfur, Mg/D(LT/D), rounded to one decimal place.

Y = The sulfur content of the acid gas from the sweetening unit, expressed as mole percent H_2S (dry basis) rounded to one decimal place.

Z = The minimum required sulfur dioxide (SO_2) emission reduction efficiency, expressed as percent carried to one decimal place. Z_i refers to the reduction efficiency required at the initial performance test. Z_c refers to the reduction efficiency required on a continuous basis after compliance with Z_i has been demonstrated.

* * * * *

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