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

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4. An introduction to the finding aids of the FR/CFR system.

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

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

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

[FNS–2007–0038]

RIN 0584–AD59

Nutrition Standards in the National School Lunch and School Breakfast Programs; Approval of Information Collection Request

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; approval of information collection request.

SUMMARY: The Food and Nutrition Service published a final rule entitled "Nutrition Standards in the National School Lunch and School Breakfast Programs" on January 26, 2012. The Office of Management and Budget (OMB) cleared the associated information collection requirements (ICR) on February 1, 2013. This document announces approval of the ICR.

DATES: The ICR associated with the final rule published in the **Federal Register** on January 26, 2012 at 77 FR 4088 was approved by OMB on February 1, 2013, under OMB Control Number 0584–0006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jon Garcia, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302.

SUPPLEMENTARY INFORMATION: The January 2012 final rule updates the meal patterns and nutrition standards for the National School Lunch and School Breakfast Programs to align them with the Dietary Guidelines for Americans. This rule requires most schools to increase the availability of fruits, vegetables, whole grains, and fat-free and low-fat fluid milk in school meals; reduce the levels of sodium, saturated fat and trans fat in meals; and meet the nutrition needs of school children within their calorie requirements. These improvements to the school meal programs, largely based on recommendations made by the Institute of Medicine of the National Academies, are expected to enhance the diet and health of school children, and help mitigate the childhood obesity trend. The proposed rule took comments on the associated ICR until March 14, 2011. Compliance with provisions of this rule is effective from July 1, 2012. This document announces OMB's approval of the ICR under OMB Control Number 0584–0006.

Dated: June 26, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2013–16278 Filed 7–5–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 245 and 272

RIN 0584–AE10

National School Lunch Program: Direct Certification Continuous Improvement Plans Required by the Healthy, Hunger-Free Kids Act of 2010; Approval of Information Collection Request

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; approval of information collection request

SUMMARY: The Food and Nutrition Service published a final rule entitled "National School Lunch Program: Direct Certification Continuous Improvement Plans Required by the Healthy, Hunger-Free Kids Act of 2010" on February 22, 2013. The Office of Management and Budget (OMB) cleared the associated information collection requirements (ICR) on April 10, 2013. This document announces approval of the ICR.

DATES: The ICR associated with the final rule published in the **Federal Register** on February 22, 2013 at 78 FR 12221 was approved by OMB on April 10, 2013, under OMB Control Number 0584–0577.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jon Garcia, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302.

SUPPLEMENTARY INFORMATION: The February 22, 2013 final rule amended the National School Lunch Program (NSLP) regulations to incorporate provisions of the Healthy, Hunger-Free Kids Act of 2010 designed to encourage States to improve direct certification efforts with the Supplemental Nutrition Assistance Program (SNAP). The provisions require State agencies to meet certain direct certification performance benchmarks and to develop and implement continuous improvement plans if they fail to do so. The final rule also amended NSLP and SNAP regulations to provide for the collection of data elements needed to compute each State's direct certification performance rate to compare with the new benchmarks. Improved direct certification efforts will help increase program accuracy, reduce paperwork for States and households, and increase eligible children's access to school meals. The proposed rule took comments on the associated ICR until April 2, 2012. This document announces OMB's approval of the ICR under OMB Control Number 0584–0577.

Dated: June 26, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2013–16189 Filed 7–5–13; 8:45 am]

BILLING CODE 3410–30–P

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 2013–09]

Reporting Ultimate Payees of Political Committee Disbursements

AGENCY: Federal Election Commission.

ACTION: Notice of interpretive rule.

SUMMARY: The Federal Election Commission is clarifying its interpretation of the regulatory requirement that political committees

report the full name and address of each person to whom they make expenditures or other disbursements aggregating more than $200 per calendar year, or per election cycle for authorized committees, and the date, amount, and purpose of such payments, in three situations: A political committee reimburses an individual who advanced personal funds to pay committee expenses aggregating more than $200 to a single vendor; a political committee pays a credit card bill that includes a charge of more than $200 for a single vendor; and a candidate uses personal funds to pay his or her authorized committee's expenses that aggregate more than $200 to a single vendor without receiving reimbursement.

DATES: July 8, 2013.

FOR FURTHER INFORMATION CONTACT: Amy L. Rothstein, Assistant General Counsel, or Joanna S. Waldstreicher, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Political committees must report the name and address of each person to whom they make expenditures or other disbursements aggregating more than $200 per calendar year, or per election cycle for authorized committees, as well as the date, amount, and purpose of such payments. 2 U.S.C. 434(b)(5), (6); 11 CFR 104.3(b)(3)(i), (vii) (unauthorized committees); 11 CFR 104.3(b)(4)(i), (vi) (authorized committees); *see also* 11 CFR 104.9(a), (b).

The Commission published a draft Notice on January 31, 2013, to seek comment on a proposed interpretative rule to clarify these requirements as they apply to the reporting of certain itemized disbursements by political committees to vendors. The Commission received four comments: Two opposed the draft; one supported the draft with a request that the Commission impose an additional reporting requirement; and one resubmitted the comment supporting the draft without itself opining on the draft. Taking those comments into consideration the Commission now issues this Notice to clarify its interpretation of 11 CFR 104.3(b)(3)(i), (vii); 11 CFR 104.3(b)(4)(i), (vi); and 11 CFR 104.9(a), (b). These clarifications are made to the reporting requirements contained in these Commission regulations and implicate no other regulations than those referenced above.

Specifically, this Notice clarifies how a political committee should report disbursements in the following scenarios:

(1) The committee reimburses an individual (such as a campaign staffer) who used personal funds to pay committee expenses aggregating more than $200 to a single vendor;

(2) the committee's payment of its credit card bill includes charges of more than $200 to a single vendor; and

(3) the committee is the authorized committee of a candidate who used personal funds to pay committee expenses aggregating more than $200 to a single vendor without receiving reimbursement.

As explained further below, in each scenario the political committee will satisfy the reporting requirements by itemizing as a memo entry on Schedule B the name and address of the original vendor, as well as the date, amount, and purpose of the original purchase made for or by the political committee. The Commission makes clear that this interpretation is based on long-standing Commission practice and is not making any fundamental changes to its rules or processes. Further, the Commission is only addressing the three issues at hand and is not extending the clarification to situations in which a vendor, acting as the committee's agent, purchases goods and services on the committee's behalf from subvendors. The relationship between committees and its vendors raises different issues than the relationships that exist in these three circumstances.

1. Reimbursements to Individuals for Certain Out-of-Pocket Expenses

When an individual who is not acting as a vendor advances his or her personal funds, including a personal credit card, to pay costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a political committee, the political committee must treat the individual's payment as a contribution.[1] 11 CFR 116.5(a), (b). The political committee must also treat the obligation arising from the individual's payment as an outstanding debt until reimbursed. 11 CFR 116.5(c); *see also* 11 CFR 104.11.

If the political committee itemizes its reimbursement to the individual on Schedule B of its report filed with the Commission, then the political committee may also need to provide information about the vendor to which the individual made payment in a memo entry associated with the reimbursement. A memo entry is required for any reimbursement of expenses other than travel and subsistence expenses if the individual's payments to the vendor on behalf of the committee aggregate more than $200 in a calendar year (or election cycle for authorized committees). When the reimbursement is for travel and subsistence advances that exceed $500, a memo entry is required for each payment to a specific vendor by that individual on behalf of the political committee if total payments to that vendor by the political committee or by that individual on behalf of the committee aggregate more than $200 in a calendar year (or election cycle for authorized committees). Each memo entry must include the name and address of the vendor, as well as the date, amount, and purpose of the payment. 11 CFR 104.3(b)(4)(i); 11 CFR 104.9.[2]

For reimbursements of credit card payments, the memo entry must include the name and address of the vendor that provided the goods or services to the political committee, rather than the credit card company that processed the payment, and the date, amount, and purpose of the payment to the vendor. Further information about the reporting of credit card payments appears in Section 2, below.

2. Payments to Credit Card Companies

Any political committee that itemizes disbursements to credit card companies on Schedule B of its report filed with the Commission must itemize as a memo entry any transaction with a single vendor charged on the credit card that exceeds the $200 itemization threshold. The memo entry must include the name and address of the vendor, and the date, amount, and purpose of the charge. Itemizing the ultimate payee, as the provider of goods or services to the political committee, accurately reflects the credit card company's limited role as a payment

[1] Certain travel and subsistence expenses that are not reimbursed, or that are reimbursed within a limited period of time, are exempt. 11 CFR 116.5(b); *see also* 11 CFR 100.79.

[2] This clarification is consistent with the Commission's Report Analysis Division Review and Referral Procedures for the 2011–2012 Election Cycle, p. 98 (*http://www.fec.gov/pdf/RAD_Procedures.pdf*), which is approved by the Commission for every two-year election cycle. Further, the Commission's Reports Analysis Division has been sending Requests for Additional Information to authorized committees that did not itemize the ultimate payee for reimbursements to staff above the applicable thresholds since the 1983–1984 election cycle. Similarly, the Reports Analysis Division has been sending Requests for Additional Information to party and non-party committees that did not itemize the ultimate payee for reimbursements to staff above the applicable thresholds since the 2005–2006 election cycle after internal review procedures for authorized and unauthorized committees were merged. However, a grace period for calendar year 2005 was provided to party and non-party committees to allow for the development of administrative tracking systems.

processor rather than as the provider of goods and services to the committee. *See* 11 CFR 102.9. The itemization requirement prevents a committee from avoiding the Act's disclosure requirements by placing operating expenditures on a credit card.[3]

3. Unreimbursed Disbursements by Candidates

A candidate may make unlimited expenditures from personal funds on behalf of his or her authorized committee. *See* 11 CFR 110.10. Any candidate who "makes a disbursement in connection with [his or her own] campaign, shall be considered . . . as having made the disbursement . . . as an agent of the authorized committee or committees of such candidate." 2 U.S.C. 432(e)(2); *see also* 11 CFR 101.2(a). Authorized committees must disclose these disbursements on their reports filed with the Commission just as they would disclose any other disbursements that they may make. 2 U.S.C. 434(b)(4), (5), (6)(A); 11 CFR 104.3(b)(4).

Thus, out-of-pocket spending by candidates, as agents of their authorized committees, requires memo entry itemization of the ultimate payee if the aggregate amount of payments to that vendor exceeds $200 for the election cycle. The memo entry must include the date, amount, and purpose of the out-of-pocket payments, as well as the name and address of the vendor to which payment was made.[4]

This interpretive rule clarifies the Commission's interpretation of existing statutory and regulatory provisions, and therefore does not constitute an agency action subject to the notice and comment requirements or a delayed effective date under the Administrative Procedure Act. *See* 5 U.S.C. 553. The provisions of the Regulatory Flexibility Act, which apply when notice and comment are required by the Administrative Procedure Act or another statute, do not apply. *See* 5 U.S.C. 603(a).

Dated: June 27, 2013.

On behalf of the Commission.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2013–16125 Filed 7–5–13; 8:45 am]

BILLING CODE 6715–01–P

[3] This clarification is consistent with the Commission's Report Analysis Division Review and Referral Procedures for the 2011–2012 Election Cycle, p. 96 (*http://www.fec.gov/pdf/RAD_Procedures.pdf*). Similarly with reimbursements to committee staff, the Commission's Reports Analysis Division has been sending Requests for Additional Information to authorized committees that did not provide memo entries for credit card payments above the applicable thresholds since the 1983–1984 election cycle.

[4] Unlike the former two circumstances, this scenario is not addressed in the Commission's Reports Analysis Division Review and Referral Procedures for the 2011–2012 Election Cycle that has been made public with redactions. Although the Reports Analysis Division will initiate a regular practice of sending Requests for Additional Information for failure to itemize the vendor for candidate out-of-pocket expenditures on behalf of his or her authorized committee, this portion of the interpretive rule will be applied prospectively. The adequacy of the responses to Requests for Additional Information on this issue will only be judged for those sent after the adoption of this interpretive rule.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12, 163, and 178

[USCBP–2012–0022; CBP Dec. 13–10]

RIN 1515–AD85

Prohibitions and Conditions on the Importation and Exportation of Rough Diamonds

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to set forth the prohibitions and conditions that are applicable to the importation and exportation of rough diamonds pursuant to the Clean Diamond Trade Act, as implemented by the President in Executive Order 13312 dated July 29, 2003, and the Rough Diamonds Control Regulations (RDCR) issued by the Office of Foreign Assets Control of the U.S. Department of the Treasury. In addition to restating pertinent provisions of the RDCR, the amendments clarify that any U.S. person exporting from, or importing to, the United States a shipment of rough diamonds must retain for a period of at least five years a copy of the Kimberley Process Certificate that currently must accompany such shipments and make the copy available for inspection when requested by CBP. The document also requires formal entry for shipments of rough diamonds.

DATES: Effective August 7, 2013.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Regulations and Rulings, Office of International Trade, (202) 325–0059.

SUPPLEMENTARY INFORMATION:

Background

I. Purpose

In response to the role played by the illicit trade in diamonds in fueling conflict and human rights violations in certain areas of the world, and to differentiate between the trade in conflict diamonds and the trade in legitimate diamonds, the United States and numerous other countries announced in the Interlaken Declaration of November 5, 2002, the launch of the Kimberley Process Certification Scheme (KPCS) for rough diamonds. Under the KPCS, participating countries prohibit the importation of rough diamonds from, or the exportation of rough diamonds to, a non-participant and require that shipments of rough diamonds from or to a participating country be controlled through the KPCS. The U.S. Secretary of State is responsible for providing an up-to-date listing of all participants in the KPCS. Swaziland was added to the list of participants in the KPCS and the addition was announced in the **Federal Register** (77 FR 27831) on May 11, 2012, and Cambodia, Cameroon, Kazakhstan, and Panama were added to the list of participants and announced in the **Federal Register** (78 FR 12135) on February 21, 2013.

II. Clean Diamond Trade Act and Executive Order

The Clean Diamond Trade Act (the Act), Public Law 108–19, 117 Stat. 631 (19 U.S.C. 3901 et seq.), was enacted on April 25, 2003. Section 4 of the Act requires the President, subject to certain waiver authorities, to prohibit the importation into, or exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the KPCS. Section 5(a) of the Act authorizes the President to issue such proclamations, regulations, licenses, and orders, and conduct such investigations, as may be necessary to carry out the Act. Section 5(b) of the Act sets forth the general recordkeeping requirements that apply to persons seeking to export from or import into the United States any rough diamonds. Section 5(b) specifically provides that any United States person seeking to export from or import into the United States any rough diamonds shall keep a full record of, in the form of reports or otherwise, complete information relating to any act or transaction to which any prohibition imposed under section 4(a) of the Act applies. Section 5(b) further provides that such person may be required to furnish such information under oath, including the production of books of

account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person. In addition to CBP having the authority to apply the customs laws to import violations of the Act, section 8 authorizes CBP and U.S. Immigration and Customs Enforcement (ICE), as appropriate, to assess penalties and enforce the export laws and regulations. *See also* 15 CFR 30.70. Therefore, pursuant to section 8, CBP may assess penalties for export recordkeeping violations. However, CBP notes that the penalties issued pursuant to section 19 U.S.C. 1509(g) for failure to comply with 19 U.S.C. 1509(a)(1)(A) do not apply to recordkeeping requirements for export documents.

On July 29, 2003, the President issued Executive Order 13312 (published in the **Federal Register** (68 FR 45151) on July 31, 2003) to implement the Act, effective for rough diamonds imported into, or exported from, the United States on or after July 30, 2003.

III. Existing Regulations and Requirements

CBP notes that persons importing into or exporting from the United States a shipment of rough diamonds must comply with the requirements of CBP, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury (31 CFR part 592), and the U.S. Census Bureau (15 CFR part 30). Such persons should also be aware of any relevant Internet postings, guidance documents, or **Federal Register** notices issued by the U.S. Department of State. Also, it should be noted that ICE can take enforcement action on illegally imported and exported rough diamonds. *See* 19 U.S.C. 3907. Examples of the other government requirements are provided below. OFAC, acting pursuant to Executive Order 13312 and other authorities, published in the **Federal Register** (69 FR 56936) the Rough Diamonds Control Regulations (RDCR) (31 CFR part 592) on September 23, 2004. To be controlled through the KPCS, the RDCR require that all shipments of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate. *See* 31 CFR 592.301(a)(1). The RDCR also require that all importers and exporters of rough diamonds file an annual report with the U.S. Department of State regarding their import and/or export activity and stockpile information. *See* 31 CFR 592.502.

The U.S. Census Bureau issued notices on December 12, 2005, and April 3, 2007, respectively entitled "Notice of Request for Faxed Submission of Kimberley Process Certificates" and "Revised Notice of Request for Faxed Submission of Kimberley Process Certificates," requiring importers, brokers, and parties involved in the export of rough diamonds to immediately fax their Kimberley Process Certificates (including voided certificates) to the U.S. Census Bureau upon clearance of their shipments into the commerce of the United States by CBP or upon export of their shipments from the United States, as applicable.

On August 15, 2012, CBP published a proposed rule in the **Federal Register** (77 FR 48918) proposing to amend title 19 of the Code of Federal Regulations (19 CFR) to restate pertinent provisions of the RDCR issued by OFAC. The document also proposed to make amendments to clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain for a period of at least five years a copy of the Kimberley Process Certificate that currently must accompany such shipments and make the copy available for inspection when requested by CBP. CBP solicited public comments on the proposed rule.

Discussion of Comments

Two commenters responded to the solicitation of public comments in the proposed rule. The comments are discussed below.

Comment:

One commenter applauded the purpose of the Clean Diamond Trade Act but stated that it has not been effective in helping people determine whether they are purchasing "blood" diamonds.

CBP Response:

The Clean Diamond Trade Act implements the Kimberley Process Certification Scheme (KPCS) for rough diamonds. The KPCS is a process, based on international cooperation and on the commitment of the entire supply chain, to prevent the importation, or exportation, of conflict diamonds. One purpose of this rulemaking is to make the Clean Diamond Trade Act as effective as possible.

Comment:

One commenter questioned the necessity of this proposed rule given the existing U.S. Census Bureau regulations (15 CFR part 30) and the OFAC regulations (31 CFR part 592) on rough diamonds, section 161.2 of the CBP regulations (19 CFR 161.2), the Clean Diamond Trade Act (19 U.S.C. 3901 et seq.), section 127.4 of the U.S. Department of State regulations (22 CFR 127.4), and section 758.7 of the U.S. Export Administration regulations (15 CFR 758.7). The commenter also noted two CBP rulings and asserted that through these rulings, CBP is instructing the public to mount rough diamonds to escape regulatory controls. Finally, the commenter requested information on the amount of time and money that was spent to develop the proposed rulemaking.

CBP Response:

While some of the proposed amendments restate the pertinent provisions of the RDCR and cross-reference other agency regulations related to rough diamonds (e.g., 15 CFR part 30), CBP has made substantive changes to its regulations through the other proposed amendments. For example, the proposed amendments clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain for a period of at least five years a copy of the Kimberley Process Certificate that currently must accompany such shipments and make the copy available for inspection when requested by CBP. CBP also proposed to amend its current regulations to require formal entry for shipments of rough diamonds pursuant to the authority provided in 19 U.S.C. 1484 and 1498(a)(1)(B). The restatements of the other agency regulations and the cross-references are made for the convenience of the importing public who use the CBP regulations as a resource.

The particular existing regulations cited by the commenter do not affect the necessity of the amendments made in this document. Specifically, section 127.4 of title 22 of the CFR (22 CFR 127.4), is not directly related to the importation or exportation of rough diamonds as it relates to defense articles, technical data, or defense services; section 161.2 of title 19 of the CFR (19 CFR 161.2) states that CBP enforces the laws of some other government agencies and provides examples of those agencies; and the Department of Commerce regulation, section 758.7 of title 15 of the CFR (15 CFR 758.7), requires, in relevant part, that CBP take appropriate action to comply with the Export Administration Regulations.

CBP also disagrees with the commenter's description of CBP administrative rulings, New York Ruling Letter (NY) N018792 and Headquarters Ruling Letter (HQ) H173035. CBP notes that HQ H173035 modified NY N018792 and notification of the modification was published in the *Customs Bulletin*, Vol. 46, No. 46, on November 7, 2012 after a notice of the proposed action was published in the *Customs Bulletin*, Vol. 46, No. 13, on March 21, 2012. In its

modified ruling, CBP clarified that jewelry set with tumbled diamonds imported from Zambia are not rough diamonds and therefore are not subject to the KPCS and are not prohibited from importation under the U.S. Clean Diamond Trade Act (19 U.S.C. 3901); however, CBP noted that loose tumbled diamonds from Zambia are not admissible into the United States because tumbled diamonds are considered rough and Zambia is not a member of the KPCS. Please note that rulings are binding on the ruling requester and are tailored to the specific facts and circumstances of the particular case at issue.

Conclusion

After review of the comments and further consideration, CBP has decided to adopt as final the proposed rule published in the **Federal Register** (77 FR 48918) on August 15, 2012.

Executive Order 12866 and 13563

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

This rule increases CBP's ability to verify whether importations or exportations of rough diamonds are in compliance with the KPCS. OFAC published the RDCR requiring the ultimate consignee to retain the original of the Kimberley Process Certificate. The amendments clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate for a period of five years and make this copy available for inspection at the request of CBP or face penalties pursuant to 19 U.S.C. 1509 or 3907. CBP believes the costs of retaining a copy of the Kimberley Process Certificate for five years and producing the copy to CBP upon request to be negligible.

Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

CBP has considered the impact of this rule on small entities. As discussed in the NPRM, this rule clarifies that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate for a period of five years and make this copy available for inspection at the request of CBP or face penalties, that may be greater than $500 (in 1980 dollars), pursuant to 19 U.S.C. 1509 or 3907. CBP believes the costs of retaining a copy of the Kimberley Process Certificate for five years and providing the copy to CBP upon request to be negligible. Additionally, as discussed in the NPRM, CBP subject matter experts do not believe this rule will increase noncompliance with the KPCS for small entities. During the comment period of the NPRM, CBP did not receive any comments that would amend these conclusions. Thus, CBP certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. The collections of information contained in these regulations are provided for by OMB control number 1505–0198, to cover the requirements concerning CBP Form 7501, and by OMB control number 1651–0076, to cover the recordkeeping requirement.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Economic sanctions, Entry of merchandise, Foreign assets control, Exports, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Sanctions.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Imports, Reporting and recordkeeping requirement.

Amendments to the CPB Regulations

For the reasons set forth above, parts 12, 163, and 178 of title 19 of the Code of Federal Regulations (19 CFR parts 12, 163, and 178) are amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12, CBP regulations, continues, and a new specific authority citation for § 12.152 is added, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.152 also issued under 19 U.S.C. 1484, 1498; the Clean Diamond Trade Act (Pub. L. 108–19, 117 Stat. 631 (19 U.S.C. 3901 et seq.)); Executive Order 13312 dated July 29, 2003.

■ 2. Section 12.152 is added to read as follows:

§ 12.152 Prohibitions and conditions on the importation and exportation of rough diamonds.

(a) *General.* The Clean Diamond Trade Act (Pub. L. 108–19) requires the President, subject to certain waiver authorities, to prohibit the importation into, or exportation from, the United States, of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme. By Executive Order 13312 dated July 29, 2003, published in the **Federal Register** (68 FR 45151) on July 31, 2003, the President implemented the Clean Diamond Trade Act, effective for rough diamonds imported into, or exported from, the United States on or after July 30, 2003. Pursuant to Executive Order 13312 and other authorities, the Office of Foreign Assets Control (OFAC), Department of the Treasury, promulgated the Rough Diamonds Control Regulations (see 31 CFR part 592). Any persons importing into or exporting from the United States a

shipment of rough diamonds must comply with the requirements of CBP, OFAC, and the U.S. Census Bureau (15 CFR part 30).

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Controlled through the Kimberley Process Certification Scheme.* "Controlled through the Kimberley Process Certification Scheme" means meeting the requirements set forth in 31 CFR 592.301;

(2) *Kimberley Process Certificate.* "Kimberley Process Certificate" means a forgery resistant document that meets the minimum requirements listed in Annex I of the Kimberley Process Certification Scheme, as well as the requirements listed in 31 CFR 592.307;

(3) *Rough diamond.* "Rough diamond" means any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States;

(4) *United States.* "United States", when used in the geographic sense, means the several states, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) *United States person.* "United States person" means:

(i) Any United States citizen or any alien admitted for permanent residence into the United States;

(ii) Any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches); and

(iii) Any person in the United States.

(c) *Original Kimberley Process Certificate.* A shipment of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate.

(d) *Formal Entry Required.* Formal entry is required when importing a shipment of rough diamonds. Formal entry procedures are prescribed in part 142 of this chapter.

(e) *Report of Kimberley Process Certificate Unique Identifying Number.* Customs brokers, importers, and filers making entry of a shipment of rough diamonds must either submit through CBP's Automated Broker Interface (ABI) system the unique identifying number of the Kimberley Process Certificate accompanying the shipment or, for non-ABI entries, indicate the certificate number on the CBP Form 7501, Entry Summary, on each applicable line item.

(f) *Maintenance of Kimberley Process Certificate*—(1) *Ultimate consignee.* The ultimate consignee identified on the CBP Form 7501, Entry Summary, or its electronic equivalent filed with CBP in connection with an importation of rough diamonds must retain the original Kimberley Process Certificate for a period of at least five years from the date of importation and must make the certificate available for examination at the request of CBP.

(2) *Importer.* The U.S. person that imports into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate accompanying the shipment for a period of at least five years from the date of importation and must make the copy available for examination at the request of CBP.

(3) *Exporter.* The U.S. person that exports from the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate accompanying the shipment for a period of at least five years from the date of exportation and must make the copy available for examination at the request of CBP.

PART 163—RECORDKEEPING

■ 3. The specific authority citation for part 163 is revised and the general authority citation continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

Section 163.2 also issued under 19 U.S.C. 3904, 3907.

* * * * *

■ 4. In § 163.2, paragraph (c) is revised to read as follows:

§ 163.2 Persons required to maintain records.

* * * * *

(c) *Recordkeeping required for certain exporters*—(1) *NAFTA.* Any person who exports goods to Canada or Mexico for which a Certificate of Origin was completed and signed pursuant to the North American Free Trade Agreement must also maintain records in accordance with part 181 of this chapter.

(2) *Kimberley Process Certification Scheme.* Any U.S. person (see definition in § 12.152(b)(5)) who exports from the United States any rough diamonds must retain a copy of the Kimberley Process Certificate accompanying each shipment for a period of at least five years from the date of exportation. *See* 19 CFR 12.152(f)(3). Any U.S. person who exports from the United States any rough diamonds and does not keep records in this time frame may be subject to penalties under 19 U.S.C. 3907.

■ 5. The Appendix to part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 12.152 Kimberley Process Certificate for rough diamonds.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 6. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624, 44 U.S.C. 3501 et seq.

■ 7. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB Control No.
*	*	*
§ 12.152 ...	Certificate and record-keeping requirements for the entry of rough diamonds.	1505–0198 and 1651–0076.
*	*	*

Thomas S. Winkowski,

Deputy Commissioner, Performing the duties of the Commissioner of U.S., Customs and Border Protection.

Approved: June 28, 2013.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2013–15972 Filed 7–5–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF STATE

22 CFR Part 123

RIN 1400–AD07

[Public Notice 8371]

International Traffic in Arms Regulations: Canadian Firearms Components Exemption

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations to implement a

statutory provision regarding the exemption from licensing for export to Canada of firearms components not exceeding $500 in value.

DATES: This rule is effective July 8, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah J. Heidema, Acting Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792, email *DDTCResponseTeam@state.gov*. ATTN: Part 123, Canadian Firearms Components Exemption.

SUPPLEMENTARY INFORMATION: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to implement section 520 of the Consolidated and Further Continuing Appropriations Act 2012 (Pub. L. 112–55), which applies to fiscal year 2012 appropriations, as carried forward for fiscal year 2013 by the Full Year Continuing Appropriations Act 2013 (Pub. L. 113–6). The Department has the authority to regulate the export control program pursuant to the Arms Export Control Act, 22 U.S.C. 2778.

Pursuant to section 520, the Department cannot require a license for the export of certain firearms and firearms components for end-use by the Canadian government with a total transaction value not exceeding $500 wholesale, and cannot require a license for the export of certain firearms components for end-use in Canada with a total transaction value not exceeding $500 wholesale. ITAR § 123.17 is revised accordingly. In addition, ITAR § 123.16(b)(6) is amended to remove the words "for personal use," as the firearms exemption at ITAR § 123.17 includes use of the exemption for an end-use other than personal use.

This rule implements a statutory mandate, and concerns a foreign affairs function of the United States. Therefore, the Department is publishing this as a final rule, and is not soliciting comments.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is the view of the Department that the provisions of § 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will 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 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.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the provisions of Executive Order 13175 do not apply to this rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This rulemaking 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 Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated "significant regulatory actions," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR 123

Arms and munitions, Exports, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 123, is amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 1. The authority citation for part 123 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228; Sec. 520, Pub. L. 112–55; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. Section 123.16 is amended by revising paragraph (b)(6) to read as follows:

§ 123.16 Exemptions of general applicability.

* * * * *

(b) * * *

(6) For exemptions for firearms and ammunition refer to § 123.17 of this subchapter.

* * * * *

■ 3. Section 123.17 is amended by revising paragraph (a) to read as follows:

§ 123.17 Exports of firearms, ammunition, and personal protective gear.

(a) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of:

(1) Parts and components for USML Category I(a) firearms, except barrels, cylinders, receivers (frames), or complete breech mechanisms, when the total value does not exceed $100 wholesale in any transaction, except to any of the countries or entities as provided in § 126.1 of this subchapter;

(2) Parts, components, accessories, or attachments for USML Category I firearms, except barrels, cylinders, receivers (frames), complete breech mechanisms, or fully automatic firearms and parts and components for such firearms, when:

(i) The total value does not exceed $500 wholesale in any transaction;

(ii) The export is to Canada for end-use in Canada or return to the United States, or temporary import into the United States of Canadian-origin items and return to Canada for a Canadian citizen; and

(iii) The exporter makes a declaration via the Automated Export System, pursuant to § 123.22(a) of this subchapter, and the exporter is eligible to export under this exemption, pursuant to § 120.1(c) of this subchapter; or

(3) Parts, components, accessories, or attachments for USML Category I firearms, including fully automatic firearms and parts and components for such firearms, when:

(i) The total value does not exceed $500 wholesale in any transaction;

(ii) The export is to Canada for end-use by the Canadian Federal Government, a Canadian Provincial Government, or a Canadian Municipal Government; and

(iii) The exporter makes a declaration via the Automated Export System, pursuant to § 123.22(a) of this subchapter, and the exporter is eligible to export under this exemption, pursuant to § 120.1(c) of this subchapter.

* * * * *

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2013–16152 Filed 7–5–13; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0554]

Drawbridge Operation Regulation; Trent River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the operating schedule that governs the US 70/Alfred C. Cunningham Bridge across the Trent River, mile 0.0, at New Bern, NC. The deviation allows the bridge draw span to remain in the closed to navigation position for one hour on two consecutive days to accommodate the annual Bike Multiple Sclerosis: Historic New Bern Bike Ride.

DATES: This deviation is effective from 8 a.m. to 9 a.m. on September 7, 2013 and again from 8 a.m. to 9 a.m. on September 8, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0554] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mrs. Jessica Shea, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422. Email *jessica.c.shea@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202)366–9826.

SUPPLEMENTARY INFORMATION: The Event Director for the Bike Multiple Sclerosis: Historic New Bern Bike Ride, with approval from the North Carolina Department of Transportation, owner of the drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.843(a) to accommodate a safe passage for cyclists during the Bike Multiple Sclerosis: Historic New Bern Bike Ride.

The US 70/Alfred C. Cunningham Bridge across the Trent River, mile 0.0, a double bascule lift Bridge, in New Bern, NC, has a vertical clearance in the closed position of 14 feet, above mean high water. Under the normal operating schedule, the US 70/Alfred C. Cunningham Bridge would open on signal during this timeframe. However, under this temporary deviation, the drawbridge will be allowed to remain in the closed-to-navigation position from 8 a.m. to 9 a.m. on Saturday, September 7, 2013 and from 8 a.m. to 9 a.m. on Sunday, September 8, 2013 to accommodate the Bike Multiple Sclerosis: Historic New Bern Bike Ride.

Vessels able to pass under the closed span may do so. Mariners are advised to proceed with caution. The Coast Guard will inform users of the waterway through our local and broadcast Notices to Mariners of the limited operating schedule for the drawbridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation. There are no alternate routes for vessels and the bridge will be able to open in the event of an emergency.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

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

Dated: June 20, 2013.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2013–16250 Filed 7–5–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0539]

RIN 1625–AA00

Safety Zone; Venetian Fireworks; Kalamazoo Lake, Saugatuck, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Kalamazoo Lake in Saugatuck, MI. This safety zone is intended to restrict vessels from a portion of Kalamazoo Lake due to a fireworks display. This

temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the fireworks display.

DATES: This rule is effective from 9 p.m. until 11 p.m. on July 27, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0539. 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 temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil*. If you have questions on viewing 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
TFR Temporary Final Rule

A. Regulatory History and Information

This annual fireworks display is codified in 33 CFR 165.929(50) with a display location on the south shore of Lake Kalamazoo. However, the Coast Guard was informed by the event organizer that this year's display will take place at a position approximately 1000 feet to the north, in the middle of Lake Kalamazoo. This temporary final rule locates a temporary safety zone over the 2013 fireworks launch site.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

Under 5 U.S.C. 553(d)(3), The Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

During the evening of July 27, 2013, the Fireworks Fund Committee in Saugatuck, MI will sponsor a fireworks display from a barge on Kalamazoo Lake. The Captain of the Port, Lake Michigan, has determined that this fireworks display will pose a significant risk to public safety and property. Such hazards include falling debris and potential collisions among spectator vessels.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the fireworks display on Kalamazoo Lake. This zone will be effective and enforced from 9 p.m. until 11 p.m. on July 27, 2013. This zone will encompass all waters of Kalamazoo Lake in Saugatuck, MI within an 800 foot radius of an approximate launch position at 42°39′4.4″ N, 86°12′17.1″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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 and executive orders.

1. Regulatory Planning and Review

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

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be small and enforced for only one day in July. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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. 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 affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Kalamazoo Lake on July 27, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before enforcement of the zone, we will issue a local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0539 to read as follows:

§ 165.T09–0539 Safety Zone; Venetian Fireworks; Kalamazoo Lake, Saugatuck, MI.

(a) *Location.* The safety zone will encompass all waters of Kalamazoo Lake near Saugatuck, MI within an 800 foot radius of an approximate launch position at 42°39′4.4″ N, 86°12′17.1″ W (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective and will be enforced from 9 p.m. until 11 p.m. on July 27, 2013.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall

contact the Captain of the Port, Lake Michigan or his on-scene representative to obtain permission to do so.

The Captain of the Port, Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Lake Michigan, or his on-scene representative.

Dated: June 21, 2013.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2013–16249 Filed 7–5–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

Safety Zone; Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at specified times on July 15 through July 19, 2013. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the U.S. Army Corps of Engineers (USACE) dispersal barriers performance testing.

During the enforcement periods listed below, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced at the times specified in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414–747–7148, email address *joseph.p.mccollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930 for the USACE performance testing at the dispersal barriers. The Coast Guard will enforce this safety zone between Mile Marker 296.1 to Mile Marker 296.7 on all waters of the Chicago Sanitary and Ship Canal according to the following schedule:

(1) *Dispersal Barrier performance testing schedule.*

July 15, 2013, from 1 p.m. until 5 p.m.;

July 16, 2013, from 7 a.m. until 11 a.m. and 1 p.m. until 5 p.m.;

July 17, 2013, from 7 a.m. until 11 a.m. and 1 p.m. until 5 p.m.;

July 18, 2013, from 7 a.m. until 11 a.m. and 1 p.m. until 5 p.m.;

July 19, 2013, from 7 a.m. until 11 a.m.

This enforcement action is necessary because the Captain of the Port, Lake Michigan has determined that the USACE Dispersal Barriers performance testing poses risks to life and property. Because of these risks, it is necessary to control vessel movement during the testing to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated representative. The Captain of the Port, Lake Michigan, or his designated representative may be contacted via the U.S. Coast Guard Sector Lake Michigan Command Center at 414–747–7182 or on VHF channel 16.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Lake Michigan, will also provide notice through other means, which may include Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice.

Additionally, the Captain of the Port, Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: June 21, 2013.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2013–16251 Filed 7–5–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60, 61, and 63

[EPA–R08–OAR–2012–0764; FRL–9828–6]

Delegation of Authority to the Southern Ute Indian Tribe To Implement and Enforce National Emissions Standards for Hazardous Air Pollutants and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve the Southern Ute Indian Tribe's (SUIT) July 3, 2012 request for delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS). This request establishes and requires SUIT to administer a NSPS and NESHAPs program per EPA regulations. The delegation is facilitated by SUIT's treatment "in the same manner as a state" (TAS) document, per CAA requirements.

DATES: This rule is effective on September 6, 2013 without further notice, unless EPA receives adverse comment by August 7, 2013. If adverse comment is 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 No. EPA–R08–OAR–2012–0764, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: olson.kyle@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection

Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket EPA–R08–OAR–2012–0764. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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 at *http://www.regulations.gov* or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, 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, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kyle Olson, Air Program, Mailcode 8P–AR, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6002 or *olson.kyle@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is taking final action to approve the Southern Ute Indian Tribe's (SUIT) July 3, 2012 request for delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS). This request establishes and requires SUIT to administer a NSPS and NESHAPs program per EPA regulations. SUIT met the requirements of Clean Air Act (CAA) sections 111(c) and 112(l) and 40 CFR subpart E for full approval to administer CAA 111 and CAA 112 programs entirely due to its prior approval of its CAA Title V Part 70 Permitting Program. The delegation is facilitated by SUIT's treatment "in the same manner as a state" (TAS) document, per CAA section 301(d)(2). This action is being taken under CAA sections 111 and 112.

Table of Contents

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows: (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The word *NESHAP* means or refers to National Emissions Standards for Hazardous Air Pollutants.

(iv) The word *NSPS* means or refers to the New Source Performance Standards.

(v) The word *SUIT* means or refers to the Southern Ute Indian Tribe.

(vi) The word *TAS* means or refers to Treatment As a State

I. General Information

A. What should I consider as I prepare my comments for EPA?

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

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

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; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

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. Delegation of Authority to SUIT

CAA sections 111(c)(1) and 112(l), as amended, authorize EPA to delegate authority to any state or tribal agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS and NESHAP. The NSPS are codified in 40 CFR part 60 and the NESHAP are codified in 40 CFR part 63. Delegation confers primary responsibility for implementation and enforcement to the respective tribal agency; however, EPA also retains the concurrent authority to enforce the standards.

With a July 3, 2012 letter, the Chairman of the Southern Ute Indian Tribe requested delegation of authority for NSPS and NESHAP, promulgated in Parts 2 and 3 of the SUIT Reservation Air Program. EPA's review of SUIT's

program determined that it contained adequate and effective procedures for the implementation and enforcement of these federal standards. Therefore, on November 27, 2012, EPA Region 8 notified SUIT that, pending publication in the **Federal Register**, the Tribe is authorized to accept delegation of NSPS and NESHAP standards with the following letter:

"The Honorable Jimmy R. Newton Jr., Chairman
The Southern Ute Indian Tribe
P.O. Box 737
Ignacio, Colorado 81137–0737

Re: Clean Air Act (CAA) 111 and 112, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Program Approval

Dear Chairman Newton:

I am pleased to inform you that, because the Southern Ute Indian Tribe has an approved CAA Title V permitting program, the EPA finds that the Tribe has the authority to carry out NSPS (CAA 111) and NESHAP (CAA 112) regulatory activities, and that the Tribe can begin requesting delegation of specific NSPS & NESHAP standards. The Tribe's treatment "in the same manner as a state" document has been updated to reflect this new Program approval (per CAA section 301(d)(2) and 40 CFR 49.6.)

NSPS establishes maximum emission levels for new stationary sources, and NESHAPs address the control of hazardous air pollutants through Maximum Achievable Control Technology (MACT) standards and related programs that enhance and support the NESHAP program. The Tribe is also granted automatic delegation of NESHAP (CAA 112) standards through incorporation by reference of the standards when they are adopted unchanged into the Reservation Air Code (RAC) from the federal standards. A request for delegation of specific NSPS (CAA 111) standards will require a letter to the EPA. After such request the EPA would publish a **Federal Register** notice containing the letter of request and an updated Code of Federal Regulations (CFR) table, and the EPA would respond by letter to the Tribe.

To approve future requests for delegation of NSPS and NESHAPS regulations the EPA will provide public notice through publication in the **Federal Register** as a direct final rule. A direct final rule makes CAA 111 and CAA 112 delegations effective the day of publication. However, should the EPA receive any adverse comments on the direct final rule, the delegation will be reconsidered.

For more information on this approval, please contact Carl Daly, Director of Region 8's Air Program at (303) 312–6416.

Sincerely,

James B. Martin
Regional Administrator"

III. Summary of Final Action

We are approving delegation of the CAA 111 and 112 programs (NSPS and NESHAP, respectively) to SUIT. We are approving this rule because the authority for this delegation is based entirely on SUIT's previous approval of the Part 70 permitting program [EPA–R08–OAR–2011–0015; FRL–9277–9]

IV. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves Tribal law as meeting federal requirements and imposes no additional requirements beyond those imposed by Tribal law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). Because this rule approves pre-existing requirements and does not impose any additional enforceable duty, it 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).

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a Tribal rule implementing a Federal standard.

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications". "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes". Under Section 5(b) of Executive Order 13175, we may not issue a regulation that has tribal implications; that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or we consult with tribal officials early in the process of developing the proposed regulation. Under Section 5(c) of Executive Order 13175, we may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation. While we conclude that this action will have tribal implications, this action is not a regulation and merely approves a Tribal rule implementing a federal standard. This action does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act except as regards implementation of CAA 111 and 112. This action will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 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 60, 61, and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Chemicals, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, National Emissions Standards for Hazardous Air Pollutants, Natural gas, New Source Performance Standards, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Tribal, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

Dated: May 30, 2013.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2013–16327 Filed 7–5–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC741

Fisheries of the Exclusive Economic Zone Off Alaska; Dusky Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for dusky rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2013 total allowable catch (TAC) of dusky rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 3, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The 2013 TAC of dusky rockfish in the Western Regulatory Area of the GOA is 377 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2013 TAC of dusky rockfish in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 277 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for dusky rockfish in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for dusky rockfish in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 1, 2013.

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

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

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

Dated: July 2, 2013.

Kelly Denit,

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

[FR Doc. 2013–16286 Filed 7–2–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC740

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2013 total allowable catch (TAC) of northern rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 3, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management

Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 TAC of northern rockfish in the Western Regulatory Area of the GOA is 2,008 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2013 TAC of northern rockfish in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,858 mt, and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for northern rockfish in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 1, 2013.

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

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

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

Dated: July 2, 2013.

Kelly Denit,

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

[FR Doc. 2013–16284 Filed 7–2–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 130
Monday, July 8, 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–2008–0256; Directorate Identifier 2007–SW–01–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. (Type Certificate Currently Held by AgustaWestland S.p.A.) (Agusta) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise an existing airworthiness directive (AD) for the Agusta Model AB139 and AW139 helicopters. The existing AD currently requires inspecting the fuselage frame to detect fatigue cracks which could lead to structural failure and subsequent loss of control of the helicopter. Since we issued that AD, Agusta has developed a frame reinforcement modification which supports extending the interval for inspecting the fuselage frame for a fatigue crack. This proposed AD would require inspecting the fuselage frame for a crack, but would reduce the applicability from the existing AD to exclude helicopters modified by the optional frame reinforcement modification. The proposed actions are intended to detect a fatigue crack that could result in failure of the fuselage frame and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by September 6, 2013.

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

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

Examining the AD Docket

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

For service information identified in this proposed AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins*. You may review the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

On June 19, 2008, we issued AD 2008–14–02, Amendment 39–15597 (73 FR 39572, July 10, 2008), for Agusta model AB 139 and AW 139 helicopters, certificated in any category. AD 2008–14–02 requires, within 10 hours time-in-service (TIS), or upon accumulating 100 hours TIS since new, whichever occurs later, inspecting the fuselage frame 5700 middle section for a crack. AD 2008–14–02 also requires repeating this inspection at intervals not exceeding 100 hours TIS, and, if a crack is found, before further flight, repairing the crack in accordance with FAA-approved procedures. AD 2008–14–02 was prompted by European Aviation Safety Agency (EASA) AD No. 2006–0357, dated November 26, 2006 (EASA AD 2006–0357), which states that tests have shown that the Agusta AB/AW 139's fuselage frame 5700 middle section is prone to fatigue damage. AD 2008–14–02 is intended to detect a crack in the fuselage frame structure, to prevent structural failure of the frame, and subsequent loss of control of the helicopter.

Actions Since Existing AD Was Issued

Since we issued AD 2008–14–02 (73 FR 39572, July 10, 2008), Agusta has issued Optional Bollettino Tecnico No. 139–089, dated February 19, 2010 (BT 139–089), which describes procedures for modifying with a structural reinforcement two different part-numbered 5700 fuselage frames and one part-numbered 3900 fuselage frame, thereby extending the repetitive inspection interval for the three frames. Subsequently, EASA issued AD No. 2006–0357R1, dated April 22, 2010 (EASA AD 2006–0357R1), which revised EASA AD 2006–0357 by

removing Agusta model AB139 and AW139 helicopters modified by BT 139–089 with the structural reinforced frames from the applicability requirements of the fatigue crack inspection.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information

Agusta issued Bollettino Tecnico No. 139–018, Revision B, dated October 18, 2006, which specifies inspection procedures for the middle section frame 5700 for all Model AB139 and AW139 helicopters except with serial number 31002, 31003, 31004, and 31007. Subsequently, Agusta issued BT 139–089, which describes procedures for installing carbon fiber structural reinforcement skins at frame station 5700 for two part-numbered fuselage frames and for one frame station 3900 fuselage frame. Once the fuselage frames have been modified in accordance with BT 139–089, the inspection interval of Mandatory Inspection task MI53–12 may be extended. EASA classified this service information as mandatory and revised its existing AD and issued AD 2006–0357R1 to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2008–14–02 (73 FR 39572, July 10, 2008), but would remove from the applicability section any helicopter modified by installing the structural reinforcement skins in accordance with BT 139–089. This proposed AD would continue to require initially inspecting the fuselage frame 5700 middle section within 10 hours time-in-service (TIS), or upon accumulating 100 hours TIS since new, whichever occurs later, for a crack. This proposed action would also continue to require repeating this inspection at intervals not exceeding 100 hours TIS, and, if there is a crack, before further flight, repairing the crack in accordance with FAA-approved procedures.

Differences Between the Proposed AD and the EASA AD

The EASA AD requires contacting the type certificate (TC) holder for further instructions if damage or a crack is found; this proposed AD would require repairing the crack, before further flight, with FAA-approved procedures with no requirement to contact the TC holder. The EASA AD also excludes helicopters with serial number 31002, 31003, 31004, and 31007; whereas, this proposed AD does not.

Costs of Compliance

We estimate that this proposed AD would affect 33 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. It would take about one work-hour to comply with the initial and each subsequent inspection required by this AD. The average labor rate is $85 per work-hour so the approximate cost for each inspection would be $85 per helicopter or $2,805 for the U.S.-registered fleet. We estimate the cost to repair the fuselage middle frame section would be about $10,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) AD 2008–14–02 (73 FR 39572, July 10, 2008), and adding the following new AD:

Agusta S.p.A. (Type Certificate Currently Held by AgustaWestland S.p.A.) (Agusta): Docket No. FAA–2008–0256; Directorate Identifier 2007–SW–01–AD.

(a) Applicability

This AD applies to Agusta Model AB139 and AW139 helicopters, except helicopters with reinforcement skin part number (P/N) 3G5306P08512 installed on left hand (LH) frame station 5700 P/N 3P5338A13352 and right hand (RH) frame station 5700 P/N 3P5338A13452; or with reinforcement skin P/N 3G5306P08513 installed on LH frame station 5700 P/N 3P5338A13353 and RH frame station 5700 P/N 3P5338A13453; or with LH frame station 5700 P/N 3P5338A13354 and RH frame station 5700 P/N 3P5338A13454 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a fatigue crack in the fuselage frame 5700 middle section. This condition could result in structural failure of the frame and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD revises AD 2008–14–02, Amendment 39–15597 (73 FR 39572, July 10, 2008).

(d) Comments Due Date

We must receive comments by September 6, 2013.

(e) Compliance

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

(f) Required Actions

(1) Within 10 hours time-in-service (TIS), or upon accumulating 100 hours TIS since new, whichever occurs later, inspect the fuselage frame 5700 middle section for a crack in accordance with the Compliance Instructions, paragraphs 1. through 4., of Agusta Bollettino Tecnico No. 139–018, Revision B, dated October 18, 2006.

(2) Thereafter, at intervals not exceeding 100 hours TIS, repeat the inspection as required by paragraph (f)(1) of this AD.

(3) If there is a crack, before further flight, repair the crack in accordance with an FAA-approved procedure.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov*.

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

(h) Additional Information

(1) Agusta Bollettino Tecnico No. 139–089, dated February 19, 2010, which is not incorporated by reference, specifies procedures to modify Model AB139 and AW139 helicopters by installing structural reinforcement skins at frame station 5700 to allow for extended inspection intervals for fatigue.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2006–0357R1, dated April 22, 2010. You may view the EASA AD at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2008–0256.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 5311, Fuselage, Main Frame.

Issued in Fort Worth, Texas, on June 28, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–16312 Filed 7–5–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0597; Directorate Identifier 2013–CE–016–AD]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Diamond Aircraft Industries GmbH Models DA 42, DA 42 NG, and DA 42 M–NG airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as insufficient clearance between the rod end safety washer and the nose landing gear attachment lever causes the rod end to bend at each gear retraction sequence. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 22, 2013.

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

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

For service information identified in this proposed AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Str.5, A–2700 Wiener Neustadt, Austria; telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *http://www.diamondaircraft.com/contact/technical.php*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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 MCAI, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2013–0597; Directorate Identifier 2013–CE–016–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://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2013–0121, dated June 4, 2013 (referred to after this as "the MCAI"), to correct an

unsafe condition for the specified products. The MCAI states:

An incident was reported where a Diamond DA 42 aeroplane experienced an un-commanded rudder input and yaw after landing gear retraction, followed by restricted rudder travel. This situation caused the pilot to misinterpret this as an engine power loss. The rudder restriction could be removed by extending the landing gear and an uneventful landing was made.
Subsequent investigation results showed that the rod end of the nose landing gear (NLG) actuator, Part Number (P/N) X11–0006/2, had broken, causing the actuator to block the nearby rudder steering linkage. This failure was likely a result of insufficient clearance between the rod end safety washer and the NLG attachment lever, causing the rod end to bend at each gear retraction sequence.
This condition, if not detected and corrected, could result in reduced control of the aeroplane.
Prompted by this event, Diamond Aircraft Industries (DAI) issued Mandatory Service Bulletin (MSB) 42–099/MSB 42NG–035, including Work Instruction (WI) WI–MSB–42–099/WI–MSB 42NG–035 (published as a single document), providing instructions to identify and modify the affected NLG actuators, which includes installation of a new rod end bearing and safety washer.
For the reasons described above, this AD requires an inspection to identify the affected NLG actuators, P/N X11–0006/2, and, if an affected unit is installed, modification of the actuator.
This AD also prohibits installation of any affected P/N X11–0006/2 NLG actuators that may be held as spares, unless they are modified.

Relevant Service Information

Diamond Aircraft Industries GmbH has issued Mandatory Service Bulletin MSB 42–099/1, MSB 42NG–035/1, dated May 3, 2013; and Work Instruction WI–MSB–42–099, WI–MSB 42NG–035, Revision 1, dated May 3, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

EASA AD No.: 2013–0121 references MSB 42–099/MSB 42NG–035, dated April 22, 2013, as the applicable service information. DAI subsequently revised this mandatory service bulletin to MSB 42–099/1, MSB 42NG–035/1, dated May 3, 2013, based on a change to the applicable P/N of the NLG actuator. This revision, MSB 42–099/1, MSB 42NG–035/1, dated May 3, 2013, is referenced in this NPRM.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 170 products of U.S. registry. We also estimate that it would take about .5 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $7,225, or $42.50 per product.

In addition, we estimate that any necessary follow-on actions would take about 2.5 work-hours and require parts costing $235, for a cost of $447.50 per product. We have no way of determining the number of products that may need these actions.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 AD:

Diamond Aircraft Industries GmbH: Docket No. FAA–2013–0597; Directorate Identifier 2013–CE–016–AD.

(a) Comments Due Date

We must receive comments by August 22, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Diamond Aircraft Industries GmbH Models DA 42, DA 42 NG, and DA 42 M–NG airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as insufficient clearance between the rod end safety washer and the nose landing gear (NLG) attachment

lever causes the rod end to bend at each gear retraction sequence. We are issuing this AD to detect and correct insufficient clearance between the rod end safety washer and the nose landing gear (NLG) attachment lever, which may cause the NLG actuator to break and possibly restrict rudder control, resulting in loss of control.

(f) Actions and Compliance

Unless already done, do the following actions as specified in paragraphs (f)(1) and (f)(2) of this AD:

(1) Within 100 hours time-in-service after the effective date of this AD or 6 calendar months after the effective date of this AD, whichever occurs first, inspect the NLG actuator to identify the part number (P/N) and serial number (S/N). If a NLG actuator P/N X11–0006/2 is installed with a S/N between 0001 and 0155 (inclusive), modify the actuator by replacing the NLG rod end bearing and safety washer with new parts. Follow the INSTRUCTIONS section of Work Instruction WI–MSB–42–099, WI–MSB 42NG–035, Revision 1, dated May 3, 2013, as specified in the Accomplishments/Instructions paragraph of Mandatory Service Bulletin MSB 42–099/1, MSB 42NG–035/1, dated May 3, 2013.

(2) As of the effective date of this AD, do not install on any airplane a NLG actuator P/N X11–0006/2 with a S/N between 0001 and 0155 (inclusive), unless the actuator has been modified following the INSTRUCTIONS section of Work Instruction WI–MSB–42–099, WI–MSB 42NG–035, Revision 1, dated May 3, 2013, as specified in the Accomplishments/Instructions paragraph of Mandatory Service Bulletin MSB 42–099/1, MSB 42NG–035/1, dated May 3, 2013.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2013–0121, dated June 4, 2013, for related information, which can be found in the AD docket on the Internet at *http://www.regulations.gov*. For service information related to this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Str.5, A–2700 Wiener Neustadt, Austria; telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *http://www.diamondaircraft.com/contact/technical.php*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri on June 28, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–16316 Filed 7–5–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2013–0007; Notice No. 138]

RIN 1513–AC01

Proposed Establishment of the Malibu Coast Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the "Malibu Coast" viticultural area in portions of Los Angeles County and Ventura County, California. The proposed viticultural area, if established, would include the existing Saddle Rock-Malibu and Malibu-Newton Canyon viticultural areas. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: We must receive your comments on or before September 6, 2013.

ADDRESSES: Please send your comments on this notice to one of the following addresses (please note that TTB has a new address for comments submitted by U.S. mail):

- *Internet: http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2013–0007 at "Regulations.gov," the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments that TTB receives about this proposal at *http://www.regulations.gov* within Docket No. TTB–2013–0007. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 138. You also may view copies of this notice, all related petitions, maps, or other supporting materials, and any comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

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

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

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

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth

standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

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

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

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

Malibu Coast Petition

TTB received a petition from Ralph Jens Carter, proposing the establishment of the "Malibu Coast" American viticultural area in portions of Los Angeles and Ventura Counties in southern California. The proposed viticultural area is a long, narrow, region along the Pacific coast, and is largely located within the Santa Monica Mountains National Recreation Area. The landscape of the proposed viticultural area is characterized by steep, rugged hillsides incised by steep-sided valleys and long, narrow canyons that empty into the Pacific Ocean. The cities of Oxnard and Camarillo are to the west, and the city of Los Angeles is located to the east. The Simi Valley and Simi Hills are located to the north of the proposed viticultural area, as well as the heavily urbanized regions of Thousand Oaks, Calabasas, Greenwich Village, and Conejo Valley.

The proposed viticultural area contains approximately 44,590 acres of privately-owned land. There are 52 commercially producing vineyards covering approximately 198 acres within the proposed viticultural area. The vineyards within the proposed viticultural area are scattered across the steep sides of the mountains, valleys, and canyons. The steep mountain slopes require extra effort to cultivate, thus contributing to the small size of many of the vineyards. Many of the vineyards are planted as firebreaks near private homes, to separate the properties from the surrounding native chaparral vegetation, which is particularly susceptible to fire due to its thick growth and high concentration of oils.

The proposed viticultural area contains several State and county parks and preserves, in addition to the Federal lands of the Santa Monica Mountains National Recreation Area. According to the petition, approximately 15 percent of the land within the proposed viticultural area is administered by the Federal Government and approximately 22 percent is administered by the California Department of Parks and Recreation. The acreage count of the publicly-owned lands is not included in the 44,590-acre size approximation of the proposed viticultural area because publicly-owned lands are not available for commercial viticulture. However, the boundaries of the proposed Malibu Coast viticultural area boundaries do not physically exclude the publicly-owned lands because boundaries that would exclude those lands would be cumbersome to describe and difficult to administer.

According to the petition, the distinguishing features of the proposed Malibu Coast viticultural area include its topography, soils, and climate. TTB notes that the proposed Malibu Coast viticultural area does not lie within any existing viticultural area. However, the smaller existing Malibu-Newton Canyon (27 CFR 9.152) and Saddle Rock–Malibu (27 CFR 9.203) viticultural areas are both located within the proposed viticultural area. The proposed viticultural area does not overlap with any other existing or proposed viticultural areas. Unless otherwise noted, all information and data contained in this document concerning the name, boundary, and distinguishing features of the proposed viticultural area are from the petition for the proposed Malibu Coast viticultural area and its supporting exhibits.

Name Evidence

The proposed Malibu Coast viticultural area lies along the coast of the Pacific Ocean and includes the city of Malibu, California. According to the petition, the name "Malibu" may have derived from a Chumash Indian word "(hu)mal-iwu," which means, "it makes a loud noise all the time over there," referring to the sound of the surf. The word was later translated by the Spaniards into "Umalibo." The present-day spelling of "Malibu" first appeared in 1805, in documents to establish the Rancho Topanga Malibu Sequit land grant. Much of the proposed viticultural area lies within the former land grant and thus takes its name from that land grant.

A search of the United States Geological Survey (USGS) Geographic Names Information System (GNIS) revealed 31 entries within the proposed viticultural area containing the word "Malibu" in the name, including 6 schools, 4 parks, 2 reservoirs, a stream, a cliff, a beach, and an airport. According to the petition, several tasting rooms and vineyards within the proposed viticultural area use the word "Malibu" in their names, including Cielo Malibu Estate, Malibu Family Wines, Malibu and Vine, Bodegas Gomez de Malibu, Donlin Malibu Estates Vineyards, Malibu Rocky Oaks, Malibu Sanity, and Malibu Vineyards.

According to the petition, the growers in the proposed viticultural area chose the name "Malibu Coast" to emphasize the region's location along the Pacific Ocean and the influence the ocean has on the climate. The petition included several exhibits offered as evidence of the use of the name "Malibu Coast" within the region of the proposed viticultural area. One exhibit, a National

Park Service map titled "Geology of the Santa Monica Mountains," shows a fault line labeled as the "Malibu Coast Fault Line" running from west of Point Dume, which is in the center of the southern boundary of the proposed viticultural area, to Santa Monica Bay, at the eastern edge of the proposed viticultural area. The petition also offers as name evidence information on two businesses in the region that incorporate "Malibu Coast" in their names: Malibu Coast Animal Hospital and Malibu Coast Nursery and Landscaping. Finally, the petitioner submitted a list of vineyards located within the proposed viticultural area, which included a vineyard named Malibu Coastal Vineyard.

Boundary Evidence

The proposed Malibu Coast viticultural area is a long, narrow region located within the Santa Monica Mountains along the Pacific Ocean. The boundary of the proposed viticultural area approximates the boundary of the Santa Monica Mountains National Recreation Area, and the proposed viticultural area contains approximately 44,590 acres of privately owned land that are available for commercial viticulture.

The northern portion of the proposed boundary roughly follows U.S. Highway 101 from Oxnard to the city of Los Angeles and separates the largely rural proposed viticultural area from the densely populated urban areas of Thousand Oaks, Calabasas Greenwich Village, Conejo Valley, Simi Valley, and Simi Hills. The proposed northern boundary also divides the high, steep slopes of the Santa Monica Mountains within the proposed viticultural area from the lower elevations of Conejo Valley, Simi Valley, and the Simi Hills. Because of its distance inland and the sheltering effects of the Santa Monica Mountains, the region north of the proposed viticultural area is significantly less influenced by the cool, moist breezes of the Pacific Ocean. However, a portion of Las Virgenes Canyon that extends north of U.S. Highway 101 is included within the proposed viticultural area because its terrain is similar to that of the rest of the proposed viticultural area and because Las Virgenes Creek, which lies within the Las Virgenes Canyon and empties into the Pacific Ocean, allows the marine influence to travel the length of the canyon.

The eastern portion of the proposed boundary follows the Los Angeles city limits and the boundary of Topanga State Park. The city of Los Angeles lies east of the proposed viticultural area border and is excluded from the proposed viticultural area due to its dense urban environment, which is unsuitable for commercial viticulture. Although the geographical features of Topanga State Park are similar to those of the proposed viticultural area, it is unavailable for commercial viticultural due to its status as a State park.

The southern boundary of the proposed viticultural area follows State Route 1 (the Pacific Coast Highway) in a westerly direction from Topanga State Park to the Naval Air Weapons Station and Naval Base Ventura County. A series of narrow State and county beach parks line the coast immediately outside the length of the proposed southern boundary and, other than Point Dume, the land south of State Route 1 is excluded from the proposed viticultural area because these public beaches are unavailable for commercial viticulture.

The western boundary of the proposed viticultural area runs between State Route 1, near the Naval Air Weapons Station and Naval Base Ventura County, and U.S. Highway 101 east of the Camarillo Airport and follows a series of roads and elevation contours. The regions to the west of the proposed boundary were excluded from the proposed viticultural area because their flat, low elevations and marshy coastline are topographically distinctive from the marine terraces and high, steep mountains of the proposed viticultural area. Additionally, because most of this region is covered by military installations and the dense urban areas of Oxnard and Camarillo, there is little suitable land available for commercial viticulture.

Distinguishing Features

The distinguishing features of the proposed Malibu Coast viticultural area are topography, soils, and climate. Because the proposed viticultural area is bordered by public beaches and the Pacific Ocean to the south, and both Topanga State Park and the heavily urbanized city of Los Angeles to the east, the discussion of distinguishing features only compares the proposed viticultural area with the regions to the north and west.

Topography

The topography of the proposed Malibu Coast viticultural area is characterized by the Santa Monica Mountains, which are oriented along an east-west axis between the cities of Los Angeles, to the east, and Oxnard and Camarillo, to the west. The mountain range begins as low marine terraces along the coastline and rapidly rises towards the north, increasing in steepness and elevation, with a maximum height of 3,111 feet at Sandstone Peak, in the western portion of the proposed viticultural area. Small steep-sided valleys and narrow, north-south oriented canyons that empty into the Pacific Ocean are also interspersed throughout the mountainsides. According to the petition, the steep slopes provide excellent water drainage for vineyards. Additionally, the north-south orientation of the canyons allows cool, moist air and fog from the Pacific Ocean to travel deep into the proposed viticultural area and thus contributes to the moderate temperatures within the proposed viticultural area.

The slopes of the Santa Monica Mountains within the proposed viticultural area tilt predominately toward the south, allowing the vineyards planted on the south-facing slopes to receive high amounts of solar radiation. The southerly orientation of the slopes also exposes the vineyards to sunlight that is reflected off the water of the Pacific Ocean, an effect known as a "second sun." The high level of solar radiation warms the soil in the vineyards quickly, which stimulates vine growth and fruit maturation. The warmed soil then slowly releases the stored heat back into the air in the early morning, at night, and during periods of cloud cover, providing a source of warmth to the vines during the times when the surrounding air temperature is cool.

Conejo Valley, Simi Valley, and the Simi Hills are located to the north of the proposed viticultural area, and the elevations within these regions are generally lower than elevations within the proposed Malibu Coast viticultural area. According to USGS maps provided with the petition, elevations within Conejo Valley and Simi Valley range between 640 and 700 feet. Elevations within the Simi Hills range between 1,800 and 2,400 feet. The Simi Hills have a north-south orientation, compared to the east-west orientation of the Santa Monica Mountains, and therefore do not receive as much solar radiation as the southward-facing slopes of the proposed viticultural area. Although there are canyons within the region north of the proposed viticultural area, the canyons do not stretch all the way to the ocean and thus do not serve as conduits for the cool, moist Pacific air and fog to reach the inland areas.

The terrain in the region west of the proposed viticultural area is lower and flatter than the terrain of the proposed viticultural area. Elevations to the west of the proposed viticultural area range from sea level along the shore of the Pacific Ocean to approximately 200 feet near the city of Camarillo, as shown on

USGS maps. The coastline of the region west of the proposed viticultural area is dominated by the low, flat wetlands of Mugu Lagoon and lacks the marine terraces that characterize the coastline of the proposed viticultural area.

Soils

The soils of the proposed Malibu Coast viticultural area are derived from both volcanic parent rock and sedimentary parent rock, including combinations of sandstone, slate, and shale. According to the petition, this combination of both volcanic and sedimentary soils is unique among other California coastal regions, which generally lack volcanic soils.

Seventy-five percent of the soils within the proposed viticultural area are of four soil associations: Cotharin-Talepop-Rock Outcrop; Mipolomol-Topanga-Sapwi; Chumash-Malibu-Boades; and Zumaridge-Rock Outcrop-Kawenga. Soils of the Cotharin-Talepop-Rock Outcrop association derive from volcanic rocks. The Mipolomol-Topanga-Sapwi, Chumash-Malibu-Boades, and Zumaridge-Rock Outcrop-Kawenga associations all have soils that are derived from sedimentary sources. All four of the soil associations are described as shallow, well drained soils commonly found on steep slopes. Shallow soils prevent overly vigorous vine growth and produce a thinner leaf canopy that allows sunlight to reach the fruit. In humid regions such as the proposed viticultural area, mildew and rot can form on fruit that is too shaded by the leaf canopy. Well drained soils are beneficial to viticulture because water does not accumulate long enough to lead to root rot or mildew.

The petition states that continuous human habitation within the Santa Monica Mountains of the proposed viticultural area has altered the nutrient content of the soils. Humans have inhabited the mountains for approximately 8,000 years, and large villages have been common throughout that time. The large number of bones and shells deposited in waste pits by the inhabitants throughout the ages has raised the level of calcium and phosphorus in the soils to higher levels than in the surrounding regions, according to the United States Department of Agriculture's 2006 edition of the "Soil Survey of the Santa Monica Mountains National Recreation Area." Both calcium and phosphorus are important nutrients for vine growth and fruit development.

The region located to the north of the proposed viticultural area contains soils of the Rincon-Huerhuero-Azule association. These soils are comprised of alluvium and are found on level to moderately steep slopes. The soils are described as being very deep and moderately well drained.

The regions to the west of the proposed viticultural area contain soils of the Sulfic Fluvaquents-Camarillo-Pacheco and the Camarillo-Hueneme-Pacheco association. These soils are comprised of alluvium derived primarily from sedimentary rocks and are found on nearly level terrain such as flood plains and tidal flats. These soils are also very deep and poorly drained.

Climate

The climate of the proposed Malibu Coast viticultural area is influenced by air masses over both the Pacific Ocean and the inland valleys to the north of the proposed viticultural area. During the afternoon, the warm air of the inland valleys rises. As the warm air rises, it pulls cool, moist air from the ocean along the canyons and up the mountainsides of the proposed viticultural area. These moist breezes raise the relative humidity levels within the proposed viticultural area to about 50 percent during the summer. The moisture in the air reduces heat stress on the vineyards. At night, the breezes change direction as the relatively warmer air over the ocean rises and pulls the cooler, drier nighttime air from the inland valleys into the proposed viticultural area. The dry nighttime breezes help remove excess moisture from the vines and fruit and reduce the growth of mildew.

The proposed Malibu Coast viticultural area has moderate growing season temperatures. Growing degree day [1] (GDD) accumulations gathered within the proposed viticultural area between 2005 and 2009 show that the proposed viticultural area receives between approximately 2,500 and 3,000 GDD units annually. This data categorizes the proposed viticultural area as a Region II or low Region III climate on the Winkler scale.

Rainfall within the proposed viticultural area varies depending on elevation. Along the coastline and the lower marine terraces, rainfall averages 12 to 16 inches annually. At higher elevations within the proposed viticultural area, rainfall may be as high as 30 inches annually.

[1] In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDD, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth ("General Viticulture," by Albert J. Winkler, University of California Press, 1974, pages 61–64).

The region to the north of the proposed viticultural area is primarily influenced by the inland air mass, with little marine influence. Although warm air rising from both Conejo Valley and Simi Valley draws moist air inland from the Pacific Ocean, most of the marine air is significantly drier by the time it travels over the Santa Monica Mountains and reaches the valleys. As a result, relative humidity levels within the inland valleys are lower than those of the proposed viticultural area, with humidity levels averaging 20 percent or lower during the summer. Lower humidity levels also result in less rainfall in the inland valleys, with the weather station at Canoga Park averaging only 16.47 inches of rain a year. Because the Pacific air has also warmed by the time it reaches the inland valleys, temperatures are hotter in the region north of the proposed viticultural area. The Canoga Park weather station recorded an average of 5,176 GDD units, placing the area in the very warm Region V category.

The region to the west of the proposed viticultural area shares a similar climate with the lower coastal elevations of the proposed Malibu Coast viticultural area. However, because much of the land is either within the dense urban areas of Oxnard and Camarillo or reserved for military purposes, it is generally unsuitable for commercial viticulture.

Comparison of the Proposed Malibu Coast Viticultural Area to the Existing Malibu-Newton Canyon and Saddle Rock-Malibu Viticultural Areas

Malibu-Newton Canyon Viticultural Area

The Malibu-Newton Canyon viticultural area was established by T.D. ATF–375, which published in the **Federal Register** on June 13, 1996 (61 FR 29949). It is a bowl-shaped valley located high on the south-facing side of the Santa Monica Mountains in Los Angeles County, California. The floor of the valley has an elevation of approximately 1,400 feet, with elevations at the rim of the valley ranging from 1,800 to 2,000 feet along the southern rim to 2,100 to 2,800 feet along the northern rim. Although the viticultural area is located within a valley, the terrain of the valley floor includes rolling hills and very few expanses of level ground. According to the Web site of the single vineyard within the Malibu-Newton Canyon viticultural area, Rosenthal Estates, the vines are all planted on the slopes of these rolling hills and the walls of the valley to ensure the optimal soil and

drainage conditions for viticulture (see *www.rosenthalestatewines.com*)

T.D. ATF–375 described the Malibu-Newton Canyon viticultural area as a microclimate within the larger Santa Monica Mountains. The southern rim of the valley is high enough to block the heaviest marine fogs from entering the viticultural area, but low enough to allow some of the cooling breezes into the canyon. The climate within the viticultural area is described as warm and sunny, with summer temperatures frequently exceeding 80 degrees Fahrenheit. Light fog is often present in the evenings and early mornings, as cooler air from higher elevations settles into the canyon. Rainfall averages approximately 24 inches annually. Soils within the Malibu-Newton Canyon viticultural area are described as a mixture of loam, clay, and silt and are moderately deep and moderately to highly fertile.

The proposed Malibu Coast viticultural area, if approved, would include the Malibu-Newton Canyon viticultural area. Both the proposed and existing viticultural areas share several characteristics which affect viticulture. Both the Malibu-Newton Canyon viticultural area and most of the slopes of the proposed Malibu Coast viticultural area face south, exposing both regions to high amounts of solar radiation that promote efficient photosynthesis in grapevines. The amounts of average annual rainfall within the Malibu-Newton Canyon viticultural area and the proposed viticultural area fall within the same range of precipitation. Additionally, T.D. ATF–375 states that the soils of the Malibu-Newton Canyon are calcareous, meaning they contain high levels of calcium, which is a characteristic of the soils of the proposed Malibu Coast viticultural area. Calcium plays an important role in the development of grape clusters. Finally, the vineyards within the Malibu-Newton Canyon viticultural area are planted on sloping hillsides, as are most of the vineyards in the proposed Malibu Coast viticultural area, and therefore require similar cultivation techniques.

The Malibu-Newton Canyon viticultural area also has some unique features that distinguish it from the surrounding proposed Malibu Coast viticultural area. The Malibu-Newton Canyon viticultural area is a single bowl-shaped valley, whereas the proposed Malibu Coast viticultural area encompasses an entire mountain range characterized by marine terraces and steep slopes, although other steep-sided canyons and valleys do exist within the proposed viticultural area. Additionally, both the bowl shape and the high elevation of the Malibu-Newton Canyon viticultural area shield it from much of the marine fog, which is more common along the lower slopes and within the long, narrow, north-south ranging canyons within the proposed Malibu Coast viticultural area.

Saddle Rock-Malibu Viticultural Area

The Saddle Rock-Malibu viticultural area was established by T.D. TTB–52, which published in the **Federal Register** on July 17, 2006 (71 FR 40397). The viticultural area is described as a valley in the higher elevations of the Santa Monica Mountains in Los Angeles County, California. Elevations within the Saddle Rock-Malibu viticultural area range from 1,700 to 2,236 feet. According to T.D. TTB–52, the viticultural area is on the north-facing leeward side of the crest of the Santa Monica Mountains, which limits the extent of the cooling marine influence and marine fog. As a result, the climate is warm and dry, with an average of 4,000 GDD units. The soils are described as a mixture of clay and loam that is well drained.

The proposed Malibu Coast viticultural area, if approved, would include the Saddle Rock-Malibu viticultural area. Both the proposed and existing viticultural areas share several characteristics, including high elevations, well-drained soils, and warm temperatures. However, the Saddle Rock-Malibu viticultural area also has features that distinguish it from the surrounding proposed Malibu Coast viticultural area. The Saddle Rock-Malibu viticultural area is in a sheltered location on the leeward side of the ridgeline, which blocks most of the cool, moist marine influence and produces a microclimate that is warmer than the average climate of the proposed Malibu Coast viticultural area. Additionally, the Saddle Rock-Malibu viticultural area is a single valley that contrasts with the steep mountain landscape that dominates the proposed Malibu Coast viticultural area, although the proposed viticultural area does contain several other canyons and high valleys.

TTB Determination

TTB concludes that the petition to establish the 44,590-acre Malibu Coast viticultural area merits consideration and public comment, as invited in this notice.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and TTB lists them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If TTB establishes this proposed viticultural area, its name, "Malibu Coast," will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using "Malibu Coast" in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the viticultural area's full name as an appellation of origin.

The approval of the proposed Malibu Coast viticultural area would not affect any existing viticultural area, and any bottlers using "Saddle Rock-Malibu" or "Malibu-Newton Canyon" as an appellation of origin or in a brand name for wines made from grapes grown within the Saddle Rock-Malibu or Malibu-Newton Canyon viticultural areas would not be affected by the establishment of this new viticultural area. The establishment of the Malibu Coast viticultural area would allow vintners to use "Malibu Coast" or "Saddle Rock-Malibu" as appellations of origin for wines made from grapes grown within the Saddle Rock-Malibu viticultural area if the wines meet the eligibility requirements for the appellation. Additionally, vintners would be allowed to use "Malibu Coast" or "Malibu-Newton Canyon" as appellations of origin for wines made from grapes grown within the Malibu-Newton Canyon viticultural area if the wines meet the eligibility requirements for the appellation.

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

label in a misleading manner, the bottler would have to obtain approval of a new label.

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

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed Malibu Coast viticultural area. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, topography, soils, climate, and other required information submitted in support of the petition. In addition, TTB is interested in comments on whether the geographic features of the existing Saddle Rock-Malibu and Malibu-Newton Canyon viticultural areas are so distinguishable from those of the proposed Malibu Coast viticultural area that either or both of the existing viticultural areas should not be part of the proposed viticultural area. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Malibu Coast viticultural area on wine labels that include the term "Malibu Coast" as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the viticultural area.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2013–0007 on "Regulations.gov," the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 138 on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on the "Help" tab at the top of the page.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 138 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and you may view, copies of this notice, selected supporting materials, and any electronic or mailed comments TTB receives about this proposal. A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 138. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at *http://www.regulations.gov.*

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

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

Executive Order 12866

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

Drafting Information

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

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

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

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.____ to read as follows:

§ 9.____ Malibu Coast.

(a) *Name.* The name of the viticultural area described in this section is "Malibu Coast". For purposes of part 4 of this chapter, "Malibu Coast" is a term of viticultural significance.

(b) *Approved maps.* The 10 United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Malibu Coast viticultural area are titled:

(1) Canoga Park, Calif., 1953; photorevised 1967;

(2) Topanga, CA, 1991;

(3) Malibu Beach, CA, 1995;

(4) Point Dume, CA, 1995;

(5) Triunfo Pass, CA, 1994;

(6) Point Mugu, Calif., 1949; photorevised 1967; photoinspected 1974;

(7) Carmarillo, Calif., 1950; photorevised 1967;

(8) Newbury Park, Calif., 1950; photorevised 1967;

(9) Thousand Oaks, Calif., 1950; photorevised 1981;

(10) Calabasas, Calif., 1952; photorevised 1967;

(c) *Boundary.* The Malibu Coast viticultural area is located in Los Angeles and Ventura Counties, California. The boundary of the Malibu Coast viticultural area is as follows:

(1) The beginning point is on the Canoga Park map beside Mulholland Drive at the 1,126-foot benchmark (BM 1126), located on the marked Los Angeles city boundary and the northern boundary of section 24, T1N/R17W. From the beginning point, proceed east-southeasterly along the Los Angeles city boundary approximately 3.25 miles to the marked 1,718-foot elevation point; then

(2) Proceed south-southwesterly along the Los Angeles city boundary approximately 4.35 miles, crossing onto the Topanga map, to the northeast corner of section 19, T1S/R16W; then

(3) Proceed east-southeasterly along the Los Angeles city boundary approximately 1.7 miles to the point east of Topanga Canyon where the city boundary turns south, and then continue southerly along the city boundary approximately 1.9 miles to the boundary's intersection with State Route 1 (the Pacific Coast Highway); then

(4) Proceed westerly on State Route 1, crossing onto the Malibu Beach map and then the Point Dume map, to the road's intersection with the unnamed intermittent creek located within Walnut Canyon (near the Zuma Fire Station); then

(5) Proceed southeasterly (downstream) along the unnamed intermittent creek located within Walnut Canyon to the Pacific Ocean's shoreline; then

(6) Proceed southwesterly along the Pacific Ocean shoreline approximately 1.5 miles to Point Dume and then continue northwesterly along the Pacific Ocean shoreline approximately 1.3 miles to the mouth of an unnamed intermittent stream; then

(7) Proceed northeasterly along the unnamed intermittent stream (upstream) approximately 0.35 mile to the stream's intersection with State Route 1 (at BM 30); then

(8) Proceed westerly on State Route 1 approximately 17.4 miles, crossing onto the Triunfo Pass map and then the Point Mugu map, to the road's intersection with an unnamed light-duty road known locally as Calleguas Creek Road; then

(9) Proceed north-northeasterly approximately 1.2 miles on Calleguas Creek Road, crossing onto the Camarillo map, to the road's intersection with an unnamed, unimproved road known locally as Caryl Drive; then

(10) Encircle an unnamed 350-foot hill by proceeding westerly on Caryl Drive approximately 0.2 mile to the road's intersection with an unnamed, unimproved road, then continuing on that unnamed, unimproved road around the hill in a clock-wise direction for approximately 0.8 mile until the road intersects again with Caryl Drive; then

(11) Proceed easterly on Caryl Drive approximately 0.55 mile to the road's intersection with an unnamed, unimproved road at Broome Ranch; then

(12) Proceed easterly on the unnamed, unimproved road approximately 0.2 mile to the road's intersection with the 80-foot elevation line; then

(13) Proceed initially northeasterly along the meandering 80-foot elevation line, and then continue to follow the meandering 80-foot elevation line westerly, then northeasterly to its intersection with West Potrero Road (near Camarillo State Hospital, now the site of California State University Channel Islands); then

(14) Proceed easterly on West Potrero Road approximately 0.5 mile to the road's third intersection with the 200-foot elevation; then

(15) Proceed northerly along the 200-foot elevation line approximately 0.75 mile, crossing over an unnamed intermittent creek in Long Grade Canyon, to the elevation line's intersection with a second unnamed intermittent stream; then

(16) Proceed westerly (downstream) along the unnamed intermittent stream approximately 0.75 mile to the stream's intersection with an unnamed medium-duty road known locally as Camarillo Street; then

(17) Proceed northerly on Camarillo Street approximately 0.7 mile to the street's intersection with an unnamed light-duty road at the south-bank levee for Calleguas Creek; then

(18) Proceed easterly on the unnamed light-duty road approximately 0.9 mile to the road's intersection with the 100-foot elevation line; then

(19) Proceed initially westerly and then continue easterly and then northerly along the meandering 100-foot elevation line, crossing back and forth between the Camarillo map and the Newbury Park map, to the 100-foot elevation line's intersection with the T1N/T2N boundary line near Conejo Creek on the Newbury Park map; then

(20) Proceed east along the T1N/T2N boundary line approximately 0.7 mile to its intersection with U.S. Highway 101 (Ventura Boulevard); then

(21) Proceed easterly on U.S. Highway 101 approximately 1.8 miles to the highway's intersection with Conejo Road (known locally as Old Conejo Road); then

(22) Proceed southerly and then easterly on Conejo Road approximately 0.75 mile to the road's intersection with Borchard Road (also known locally as N. Reino Road); then

(23) Proceed southerly on Borchard Road (also known locally as N. Reino Drive) approximately 0.9 mile to the point where Borchard Road (N. Reino Road) turns eastward, and then continue easterly on Borchard Road approximately 1.75 miles to Borchard Road's intersection with U.S. Highway 101 (Ventura Boulevard); then

(24) Proceed easterly on U.S. Highway 101 (Ventura Boulevard/Freeway) approximately 5 miles, crossing onto the Thousand Oaks map, to the highway's sixth and last intersection with the 920-foot elevation line in section 14, T1N/R19W (approximately 0.2 mile west of the intersection of U.S. Highway 101 and an unnamed road known locally as Hampshire Road); then

(25) Proceed southerly and then southwesterly along the meandering 920-foot elevation line to its intersection with an unnamed medium-duty road known locally as E. Potrero Road, section 27, T1N/R19W; then

(26) Proceed easterly on E. Potrero Road approximately 0.55 mile to its intersection with an unnamed heavy-

duty road known locally as Westlake Boulevard, section 26, T1N/R19W; then

(27) Proceed northeasterly on Westlake Boulevard approximately 0.4 mile to the road's second intersection with the 900-foot elevation line, section 26, T1N/R19W; then

(28) Proceed easterly along the 900-foot elevation line, crossing the Los Angeles County-Ventura County boundary, to the elevation line's intersection with the boundary of the Las Virgenes Land Grant (concurrent at this point with the northern boundary of section 31, T1N/R18W); then

(29) Proceed northeasterly along the Las Virgenes Land Grant boundary approximately 0.3 mile, crossing Triunfo Canyon, to the boundary's intersection with the 1,000-foot elevation line; then

(30) Proceed westerly and then east-northeasterly along the 1,000-foot elevation line to the line's intersection with the Las Virgenes Land Grant boundary, and then continue northeasterly along the Las Virgenes Land Grant boundary approximately 0.2 mile to the boundary's intersection with U.S. Highway 101 (Ventura Freeway); then

(31) Proceed easterly on U.S. Highway 101 (Ventura Freeway) approximately 5.7 miles, crossing onto the Calabasas map, to the highway's intersection with the northern boundary of section 30, T1N/R17, near Brents Junction; then

(32) Proceed west along the northern boundary of section 30, T1N/R17W approximately 0.5 mile to its intersection with the 1,000-foot elevation line; then

(33) Proceed northerly, southerly, and easterly along the meandering 1,000-foot elevation line, encompassing portions of Las Virgenes, East Las Virgenes, and Gates Canyons, to the elevation line's intersection with the western boundary of section 21, T1N/R17W; then

(34) Proceed north along the western boundaries of sections 21 and 16, T1N/R17W, to the section line's intersection with the Los Angeles County-Ventura County boundary line; then

(35) Proceed east along the Los Angeles County-Ventura County boundary line approximately 0.45 mile, and then proceed north along the county boundary line approximately 0.1 mile to the county boundary's intersection with Long Valley Road; then

(36) Proceed east-southeasterly on Long Valley Road approximately 1.7 miles to the road's intersection with the Los Angeles city boundary (approximately 0.1 mile north of U.S. Highway 101 (Ventura Freeway)), section 23, T1N/R17W; then

(37) Proceed south along the Los Angeles city boundary approximately 0.2 mile, then east-northeasterly approximately 0.2 mile, and then southeasterly approximately 0.9 mile to the city boundary's intersection with the northern boundary of section 26, T1N/R17W; then

(38) Proceed east-northeasterly along the Los Angeles city boundary approximately 0.3 mile, and then continue easterly along the city boundary approximately 0.5 mile, crossing onto the Canoga Park map, and returning to the beginning point.

Signed: June 24, 2013.

John J. Manfreda,

Administrator.

[FR Doc. 2013–15876 Filed 7–5–13; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0322]

RIN 1625–AA11

Regulated Navigation Area; Special Buzzards Bay Vessel Regulation, Buzzards Bay, MA

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is seeking comments and feedback on how best to enhance environmental protections and navigation safety outlined in the Special Buzzards Bay regulations. Specifically, the Coast Guard is seeking comments related to potential modifications of the current mandatory pilotage, escort tug, and Vessel Movement Reporting System (VMRS) Buzzards Bay requirements. The Coast Guard intends to use this input to propose new requirements on barges carrying 5,000 or more barrels of oil or other hazardous material.

DATES: Comments and related material must be received by the Coast Guard on or before October 7, 2013.

Requests for public meetings must be received by the Coast Guard on or before July 29, 2013.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2011–0322. 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.

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. 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. John J. Mauro, Waterways Management Division, U.S. Coast Guard First District, (617) 223–8355, email *John.J.Mauro@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

AIS Automatic Identification System
ANPRM Advanced Notice of Proposed Rulemaking
AWO American Waterways Operators
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
MOSPA Massachusetts Oil Spill Prevention and Response Act
RCP Responsible Carrier Program
RNA Regulated Navigation Area
RA Technical Risk Assessment
VMRS Vessel Movement Reporting System

A. Executive Summary

Having weighed sometimes competing, but fundamentally important goals of environmental protection, concerns of the local community, judicious use of public funds, restrained exercise of governmental regulation, facilitation of maritime commerce, and the standardization of safety regulations to avoid the fragmentation of regulatory regimes as a vessel transits across State

or regional boundaries, we now seek to develop the next phase of comprehensive, balanced, and effective risk mitigation measures for Buzzards Bay. In particular, we want to update the following areas:

- *Federal Pilotage.* The Coast Guard believes laden tank barges transiting Buzzards Bay and carrying 5,000 or more barrels of oil or other hazardous material should be under the direction and control of an independent pilot regardless of whether those tank barges are single or double hull.
- *Reporting and participation requirements of the VMRS Buzzards Bay.* The Coast Guard believes amending the reporting and participation requirements of the VMRS Buzzards Bay to focus on that population of marine traffic that is laden with 5,000 or more barrels of oil or hazardous material, rather than all marine traffic, will enhance navigation safety and marine environmental protection. The intent is that the VMRS will still be manned on a 24 × 7 basis.
- *Escort Tugs.* The Coast Guard believes that under certain conditions (e.g. adverse weather, equipment limitations), double hull tank barges laden with 5,000 or more barrels of oil or hazardous material may require a tug escort. Single-hull tank barges will continue to require tug escorts under all circumstances. The Coast Guard notes that single hull tank barges are to be phased out January 1, 2015.

B. 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 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 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 on or before July 29, 2013, 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**.

C. Regulatory History and Information

The Oil Pollution Act of 1990 (OPA 90) resulted in sweeping changes to the way oil and chemical transportation is conducted in the United States and throughout the world. This wide-ranging legislation required changes in virtually every aspect of the oil transportation industry. It involved new construction requirements, operational changes, response planning, licensing and manning mandates, and increased liability limits.

One significant pollution prevention standard in OPA 90 was the requirement that new tank barges and vessels be of double- hull construction. This provision also required that existing single-hull tank vessels (including barges) be retrofitted with a double hull or be phased out of operation entirely by January 1, 2015.

In 1998, in response to the January 1996 grounding of a single-hull tank barge off Moonstone Beach in Rhode Island that resulted in the release of approximately 880,000 gallons of #2 fuel oil, the Coast Guard established an RNA for the navigable waters of the First Coast Guard District. The RNA required any single-hull tank barge carrying petroleum as bulk cargo to be accompanied by an escort or assist tug unless towed by a tug equipped with twin-screws and two engines independent of each other and capable of maintaining control of the tank barge in the event of a loss of one of the engines. It also stipulated that the escort or assist tug must be of sufficient capability to push or tow the tank barge promptly away from danger, and noted that the use of double-hull barges would remove the need for twin-screw, twin-engine tugs.

In response to the April 2003 grounding of the oil-laden barge B–120, which spilled approximately 98,000 gallons of No. 6 oil into Buzzards Bay, the Coast Guard undertook several studies and assessments, facilitated public discussion and ultimately implemented additional measures to improve navigation safety and protect the marine environment. Those measures included aids-to-navigation improvements and adoption of a voluntary recommended vessel route ("green lanes") in 2004, followed in 2007 by an updated RNA that contained requirements for escort tugs, federally licensed pilots, and creation of a VMRS; these enhancements were accompanied by widely expanded use of AIS. These changes were intended to reduce the navigation and environmental risks associated with tank barges laden with

5,000 or more barrels of petroleum product or other hazardous material.

Since 2007, the American Waterways Operators (AWO) Responsible Carrier Program (RCP) and the emerging Coast Guard Towing Vessel Inspection Program have also served to reduce the likelihood of a material or human factor-related incident through vessel design and equipment standards, maintenance programs, staffing and certification programs, and compliance programs. For more information about the Coast Guard Towing Vessel Inspection Program, see the notice of proposed rulemaking published at 76 FR 49976. For more information about the AWO RCP, please see their Web site: *http://www.americanwaterways.com/commitment_safety/index.html.*

D. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

In 2012, the Coast Guard and Massachusetts Department of Environmental Protection (Mass DEP) contracted with the Homeland Security Systems Engineering Development Institute (HS–SEDI) to provide a technical risk assessment (RA) and evaluation of measures to further reduce the level of potential risk of an oil spill in Buzzards Bay and the Cape Cod Canal (The RA will be provided in the docket).

The RA noted that double-hull tank barge requirements, which become fully effective in January 2015, have increasingly resulted in a significant reduction in the probability of an oil spill after a marine incident that culminated in a collision, allision, or grounding. The double hull requirement is noted as one of the primary contributors to risk reduction in Buzzards Bay.

The purpose of this proposed rulemaking is to provide for safety on the navigable waters in the regulated area.

E. Discussion of the Proposed Rule

The Coast Guard plans to use the results of this RA to evaluate the current level of federal regulation for Buzzards Bay and the Cape Cod Canal, and to determine whether changes are necessary to the VMRS, federal pilots, and/or tug escort system requirements in order to enhance safety in the marine environment and further reduce the potential for oil spills.

VMRS: We believe that the current regulations regarding the VMRS need revision, in that the majority of vessels currently monitored do not pose significant threats of pollution incidents. As currently written, the regulations direct watch stander focus from the higher risk population of oil and hazardous cargo laden tank barges to the much broader population of nearly ALL vessels transiting in Buzzards Bay. In addition, in a comparative ranking of measures that would mitigate risk of an oil spill, the RA ranked the VMRS as one of the less effective options for preventing spills in Buzzards Bay. Therefore, we believe that the public would be best served if the VMRS were to focus specifically on the highest risk vessels that transit Buzzards Bay, (oil laden tank barges carrying 5,000 or more barrels of petroleum or other hazardous cargo) rather than ALL vessels.

Certain classes of vessels that frequent Buzzards Bay and are currently subject to the VMRS regulations, such as commercial fishing vessels and ferries, usually have a maximum capacity of 250 barrels of petroleum (primarily for fuel). This is well below the 5,000-barrel threshold considered to be a significant threat to the environment as defined in the 2007 regulations that implemented several navigation safety measures in Buzzards Bay and established the VMRS. (See 72 FR 50052.)

More than 20,000 commercial cargo vessels, tankers, tugs, barges, passenger vessels, and commercial fishing vessels pass through Buzzards Bay each year, along with thousands of smaller recreational boats. Of those, roughly 600 are tank barges laden with 5,000 or more barrels of petroleum or other hazardous material. When viewed in combination with the increased measures already implemented along with those that we propose to put in place (including mandatory pilotage and condition-based tug escorts), the need for this additional control for tank barges laden with *LESS* than 5,000 barrels of petroleum or other hazardous material is no longer necessary and counter-productive as it diffuses watch stander attention from the higher risk target population.

Changing certain reporting and participation requirements of the Buzzards Bay VMRS to more closely focus monitoring activity on tank barges laden with 5,000 or more barrels of petroleum or other hazardous material would reduce reporting and participation on certain other classes of vessels, and permit marine controllers to focus more closely on the intended vessel population—tank barges laden with 5,000 or more barrels of petroleum product or other hazardous material—thereby reducing costs and improving navigation safety in Buzzards Bay.

What changes to the VMRS Buzzards Bay reporting and participation requirements are being considered by the Coast Guard?

Only tank barges laden with 5,000 or more barrels of petroleum or other hazardous material (both single hull and double hull) would be required to submit intentions and position reports, and would be actively monitored as they transited through Buzzards Bay by the VMRS control center at the Cape Cod Canal. All other classes of vessels (such as ferries and commercial fishing vessels) that currently participate in the VMRS in either an "active" or "passive" capacity (per the VMRS User Manual) would be exempt from VMRS requirements and would not be actively monitored by the VMRS control center.

What would not change from the current VMRS Buzzards Bay reporting and participation requirements?

1. All vessels subject to the Bridge-To-Bridge Radiotelephone Act (i.e., primarily commercial vessels, including ferries and commercial fishing vessels, but not including recreational vessels) would still be required to monitor the VMRS radio frequency (channel 13 VHF–FM) at all times while operating within the VMRS area and respond promptly when hailed. (See Pub. L. 92–63; 85 Stat. 164; 33 U.S.C. 1201–1208; 33 CFR 26; 47 CFR 80.1001–80.1023; 46 CFR 7).

2. All vessels (including recreational vessels) would still be required to observe the Inland Rules of the Road (See Pub. L. 96–591; 94 Stat. 3415; 33 U.S.C. 2001–2038; 33 CFR 84–90).

3. All current reporting and participation requirements for tank barges laden with 5,000 or more barrels of petroleum or other hazardous material will continue to be in effect.

4. VMRS Buzzards Bay Control will continue to be staffed and operated by U.S. Army Corps of Engineers, Cape Cod Canal.

Federal Pilots: The existing regulation states that each single hull tank barge transiting Buzzards Bay carrying 5,000 or more barrels of oil or other hazardous material must be under the direction and control of a pilot, who is not a member of the crew, operating under a valid, appropriately endorsed, Federal first class pilots license issued by the Coast Guard. Pilots are required to embark, direct, and control from the primary tug during transits of Buzzards Bay. The new regulation would extend this requirement to double hulls as well

so that all oil or hazardous material-laden tank barges carrying 5,000 or more barrels of petroleum or other hazardous material would require pilots under all circumstances. The RA acknowledges that the independent pilotage requirement proposed provides additional decision support and experience on the tug when transiting Buzzards Bay, and significantly reduces the probability of a human factor-induced incident.

Escort Tugs: The Coast Guard is considering establishing certain thresholds, the exceedance of which would trigger the requirement for an escort tug for double-hull tank barges laden with 5,000 or more barrels of oil or hazardous material. These thresholds could be expressed in terms of meteorological conditions such as wind speed, wave height or visibility, or any other factors deemed appropriate, such as equipment limitations or defects. Specifically, the Coast Guard seeks the input of operators, pilots, industry associations, regulators, members of the Area Committee, and concerned citizens on the potential threshold conditions which would trigger the requirement of an escort tug for double-hull tank barges laden with 5,000 or more barrels of oil or hazardous material.

Once these threshold conditions are fixed, industry would have the flexibility to determine if the need to transit during these high-risk periods is offset by the additional cost of the escort, or if a delay in transit awaiting more favorable conditions is a better option.

In a comparative ranking of measures that would mitigate risk of an oil spill, the RA quotes a National Academy of Science study indicating that double hulls result in a 75 to 83 percent reduction in the probability of a spill, should a grounding, collision or allision occur. Therefore, escort tugs would continue to accompany all single-hulled tank barges laden with 5,000 or more barrels of petroleum or other hazardous material through Buzzards Bay until single-hulled tank barges are phased out January 1, 2015.

F. Information Requested

This advance notice of proposed rulemaking invites public comment on the merits, advantages, and disadvantages of changing certain vessel reporting and participation requirements of the Buzzards Bay VMRS; Federal Pilots, not a member of the crew, on board tugs towing both single- and double-hulled tank barges; and Escort Tugs for double-hull tank barges during adverse conditions.

G. Preliminary Regulatory Analysis

This document is issued under authority of 5 U.S.C. 552(a) and 33 CFR 1.05–30.

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. The U.S. Supreme Court, in the cases of *United States* v. *Locke,* 529 U.S. 89 (2000) and *Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151 (1978) has ruled that certain categories of regulation issued pursuant to the Ports and Waterways Safety Act of 1972, as amended, are reserved exclusively to the Coast Guard, and that State regulation in these areas is preempted. In general, only the federal government may regulate the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of tank vessels. Similarly, where the Coast Guard enacts regulations that control vessel traffic or are otherwise intended to protect navigation and the marine environment, or affirmatively determines that such regulation is unnecessary or inappropriate, a State may not enact rules that conflict with the Coast Guard's determination in that area, including situations in which the State rules are identical to the federal rules.

As noted previously in our 2007 rulemaking (See 72 FR 50052), the Coast Guard believes that State law is preempted on the subjects discussed in this ANPRM, specifically with regard to the subjects of vessel routing, manning, and tug escort requirements in Buzzards Bay.

Nevertheless, the Coast Guard recognizes the key role State and local governments may have in making regulatory determinations. Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected State and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process.

Therefore, we invite affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to this notice. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document (1) the extent of the Coast Guard's consultation with State and local officials that submit comments to this advanced notice of proposed rulemaking, (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard's position thereon, and (3) the extent to which the concerns of State and local officials have been met. We will also report to the Office of Management and Budget any written communications with the States.

Dated: May 30, 2013.

D.B. Abel,

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

[FR Doc. 2013–16252 Filed 7–5–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0026, FRL–9830–9]

Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze; Notice of Public Hearings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearings; extension of comment period.

SUMMARY: EPA has scheduled additional public hearings for our proposed action on Wyoming's State Implementation Plan (SIP) addressing regional haze under. We are making this change in response to letters submitted by the Governor of Wyoming on June 13, 2013, the Wyoming Congressional Delegation on June 14, 2013, and the Wyoming Department of Environmental Quality on June 14, 2013. The comment period for this action was scheduled to close on August 9, 2013. EPA is extending the comment period to August 26, 2013 to allow for a full 30 days for the submission of additional comments following the public hearings.

DATES: Public hearings for this proposal are scheduled to be held on July 17, 2013 at the Laramie County Library, Cottonwood Room, 2200 Pioneer Avenue, Cheyenne, Wyoming 82001 and on July 26, 2013 at the Oil & Gas Conservation Commission, Meeting Room 129, 2211 King Boulevard,

Casper, Wyoming 82602. The public hearings will be held from 1 p.m. until 5 p.m. and again from 6 p.m. until 8 p.m. at both locations. The comment period for the proposed rule published June 10, 2013 at 78 FR 34738 is extended. Comments must be received on or before August 26, 2013.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION: On June 10, 2013, we published a proposed rule partially approving and partially disapproving Wyoming's 40 CFR 51.309(g) regional haze SIP. 78 FR 34738. In our June 10, 2013 proposed rule, we provided notification that we were holding a public hearing on June 24, 2013, in Cheyenne, Wyoming. To partially accommodate requests for both additional time to prepare for public hearings and an extension to the public comment period in letters from the Governor of Wyoming on June 13, 2013, the Wyoming Congressional Delegation on June 14, 2013, and the Wyoming Department of Environmental Quality on June 14, 2013, we have scheduled additional public hearings as stated above and extended the public comment period to August 26, 2013.

The public hearings will provide interested parties the opportunity to present information and opinions to EPA concerning our proposal. Interested parties may also submit written comments, as discussed in the proposed rulemaking. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings.

Dated: June 21, 2013.

Howard M. Cantor,

Acting Regional Administrator, Region 8.

[FR Doc. 2013–16295 Filed 7–5–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2012–0386; FRL–9829–5]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the West Virginia Portion of the Parkersburg-Marietta, WV–OH 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; supplemental.

SUMMARY: EPA is issuing a supplement to its proposed approval of the State of West Virginia's request to redesignate the West Virginia portion of the Parkersburg-Marietta, WV–OH fine particulate matter ($PM_{2.5}$) nonattainment area (Parkersburg-Marietta Area or Area) to attainment for the 1997 annual $PM_{2.5}$ national ambient air quality standard (NAAQS). This supplemental proposal revises and expands the basis for proposing approval of the State's request in light of developments since EPA issued its initial proposal on December 11, 2012. This supplemental proposal addresses the effects of two decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit Court): The D.C. Circuit Court's August 21, 2012 decision to vacate and remand to EPA the Cross-State Air Pollution Control Rule (CSAPR); and the D.C. Circuit Court's January 4, 2013 decision to remand to EPA two final rules implementing the $PM_{2.5}$ NAAQS. EPA is seeking comment only on the issues raised in this supplemental proposal and is not reopening for comment other issues raised in its prior proposal.

DATES: Written comments must be received on or before August 7, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0386 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0386, Cristina Fernandez, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0386. 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, 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background

On March 5, 2012, the State of West Virginia through the West Virginia Department of Environmental Protection (WVDEP) formally submitted a request to redesignate the West Virginia portion of the Parkersburg-Marietta Area from nonattainment to attainment of the 1997 annual $PM_{2.5}$ NAAQS. Concurrently, West Virginia submitted a maintenance plan for the Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years.

On December 11, 2012 (77 FR 73560), EPA published a notice of proposed rulemaking (NPR or the December 11, 2012 NPR) determining that the Parkersburg-Marietta Area has attained the 1997 annual $PM_{2.5}$ NAAQS and that the Area has met the requirements for redesignation under section 107(d)(3)(E) of the Clean Air Act (CAA) upon approval of the base year emissions inventory. On December 12, 2012 (77 FR 73924), EPA approved the base year emissions inventory which included emissions estimates that cover the general source categories of point, area, nonroad mobile, onroad mobile, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3), and sulfur dioxide (SO_2). This emissions inventory satisfies the requirement of section 172(c)(3) of the CAA, which requires states to submit a comprehensive, accurate, and current emissions inventory for a nonattainment area. For purposes of the $PM_{2.5}$ NAAQS, this emissions inventory addresses not only direct emissions of $PM_{2.5}$, but also emissions of all precursors with the potential to participate in $PM_{2.5}$ formation, i.e., SO_2, NO_X, VOC and NH_3.

In the December 11, 2012 NPR, EPA proposed several actions related to the redesignation of the Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS. First, EPA proposed to approve West Virginia's request to change the legal definition of the West Virginia portion of the Parkersburg- Marietta Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. Second, EPA proposed to approve the maintenance plan for the West Virginia portion of the Area as a revision to the West Virginia SIP because the plan meets the requirements of section 175A of the CAA. Third, EPA proposed to approve the insignificance determination for the onroad motor vehicle contribution of $PM_{2.5}$, NO_X and SO_2 in the West Virginia portion of the Area for transportation conformity purposes. EPA received no comments in response to the December 11, 2012 NPR proposing approval of the above described redesignation request, maintenance plan and the insignificance determination. EPA is not reopening the public comment period to submit comment on the issues addressed in the December 11, 2012 NPR.

EPA today is issuing a supplement to its December 11, 2012 NPR. This supplemental NPR addresses two recent decisions of the D.C. Circuit Court which affect the proposed redesignation and which have arisen since the issuance of the NPR: (1) The D.C. Circuit Court's August 21, 2012 decision to vacate and remand to EPA the CSAPR and (2) the D.C. Circuit Court's January 4, 2013 decision to remand to EPA two final rules implementing the $PM_{2.5}$ NAAQS. Therefore, EPA's supplemental proposal revises and expands the basis for EPA's proposed approval of West Virginia's request to designate the Parkersburg-Marietta Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, in light of these developments since EPA's initial NPR.

II. Specific Issues on Which EPA Is Taking Comments

A. Effect of the August 21, 2012 D.C. Circuit Court Decision Regarding EPA's CSAPR

1. Background

In its December 11, 2012 NPR to redesignate the Parkersburg-Marietta Area, EPA proposed to determine that the emission reduction requirements that contributed to attainment of the 1997 annual $PM_{2.5}$ standard in the nonattainment area could be considered permanent and enforceable. EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011) to replace Clean Air Interstate Rule (CAIR), which has been in place since 2005. *See* 76 FR 59517. CAIR requires significant reductions in emissions of SO_2 and NO_X from electric generating units to limit the interstate transport of these pollutants and the ozone and $PM_{2.5}$ they form in the atmosphere. *See* 76 FR 70093. The D.C. Circuit Court initially vacated CAIR, *North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded that rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

CSAPR included regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR Federal Implementation Plans (FIPs) for control periods in 2012 and beyond. *See* 76 FR 48322. Although West Virginia's redesignation request and maintenance plan relied on reductions associated with CAIR, EPA proposed to approve the request based in part on the fact that CAIR was to remain in force through the end of 2011 and CSAPR would achieve "similar or greater reductions in the relevant areas in 2012 and beyond." *See* 76 FR 59517.

On December 30, 2011, the D.C. Circuit Court issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the D.C. Circuit Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The D.C. Circuit Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit Court issued the decision in *EME Homer City*, to vacate and remand CSAPR and ordered EPA to continue administering CAIR "pending . . . development of a valid replacement." *EME Homer City at* 38. The D.C. Circuit Court denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court, but those petitions have not been acted on to date. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

2. Supplemental Proposal on This Issue

In light of these unique circumstances and for the reasons explained below, EPA in this portion of its supplemental rule is seeking comment limited to the impact of the D.C. Circuit Court's decision in *EME Homer City* ruling on EPA's proposal to approve the redesignation request and the related SIP revisions for the Parkersburg-Marietta Area, including West Virginia's plan for maintaining attainment of the 1997 annual $PM_{2.5}$ standard in the Area. As explained in greater detail below, to the extent that attainment is due to emission reductions associated with CAIR, EPA is here determining that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A.

As directed by the D.C. Circuit Court, CAIR remains in place and enforceable until EPA promulgates a valid replacement rule to substitute for CAIR. West Virginia's SIP revision lists CAIR as a control measure that was adopted by the State in 2006 and required compliance by January 1, 2009. CAIR was thus in place and getting emission reductions when Parkersburg-Marietta began monitoring attainment of the 1997 annual $PM_{2.5}$ standard during the 2006–2008 time period. The quality-assured, certified monitoring data continues to show the area in attainment of the 1997 $PM_{2.5}$ standard through 2011.

To the extent that West Virginia is relying on CAIR in its maintenance plan to support continued attainment into the future, the recent directive from the D.C. Circuit Court in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the D.C. Circuit Court to develop a new rule to address interstate transport to replace CSAPR, and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs in response to it, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. The D.C. Circuit Court's clear instruction to EPA is that it must continue to administer CAIR until a valid replacement exists, and thus EPA believes that CAIR emission reductions may be relied upon until the necessary actions are taken by EPA and states to administer CAIR's replacement. Furthermore, the D.C. Circuit Court's instruction provides an additional backstop by definition, any rule that replaces CAIR and meets the D.C. Circuit Court's direction would require upwind states to have SIPs that eliminate any significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Moreover, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit Court emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years." *EME Homer City*, 696 F.3d at 38. The accumulated reliance interests include the interests of states that reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the D.C. Circuit Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for regulatory purposes such as redesignations. Following promulgation of the replacement rule for CSAPR, EPA will review existing SIPs as appropriate to identify whether there are any issues that need to be addressed.

B. Effect of the January 4, 2013 D.C. Circuit Court Decision Regarding the $PM_{2.5}$ Implementation Under Subpart 4

1. Background

On January 4, 2013, in *Natural Resources Defense Council* v. *EPA*, the D.C. Circuit Court remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)" final rule (73 FR 28321, May 16, 2008) (collectively, "1997 $PM_{2.5}$ Implementation Rule"). 706 F.3d 428 (D.C. Cir. 2013). The D.C. Circuit Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I.

2. Supplemental Proposal on This Issue

In this portion of EPA's supplemental proposal, EPA is soliciting comment on the limited issue of the effect of the D.C. Circuit Court's January 4, 2013 ruling on the proposed redesignation. As explained below, EPA is proposing to determine that the D.C. Circuit Court's January 4, 2013 decision does not prevent EPA from redesignating the Parkersburg-Marietta Area to attainment. Even in light of the D.C. Circuit Court's decision, redesignation for this Area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the Parkersburg-Marietta Area redesignation request and disregards the provisions of its 1997 $PM_{2.5}$ implementation rule recently remanded by the D.C. Circuit Court, the State's request for redesignation of this Area still qualifies for approval. EPA's discussion takes into account the effect of the D.C. Circuit Court's ruling on the Area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

a. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the D.C. Circuit Court's January 4, 2013 ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 $PM_{2.5}$ NAAQS under subpart 4 of Part D of the CAA, in addition to subpart 1. For the purposes of evaluating West Virginia's redesignation request for the Parkersburg-Marietta Area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not "applicable" for the purposes of section 107(d)(3)(E) of the CAA, and thus EPA is not required to consider subpart 4 requirements with respect to the Parkersburg-Marietta Area redesignation. Under its longstanding

interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are "applicable" and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). *See also* "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of "applicable" under the statute is "whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment").[1] In this case, at the time that West Virginia submitted its redesignation request, requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA's view that, for purposes of evaluating the Parkersburg-Marietta Area redesignation, the subpart 4 requirements were not due at the time West Virginia submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit Court's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the D.C. Circuit Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that "applicable requirements," for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.*, Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be "applicable" for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E) of the CAA.

EPA's interpretation derives from the provisions of section 107(d)(3) of the CAA. Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet "all requirements 'applicable' to the area under section 110 and part D." Section 107(d)(3)(E)(ii) provides that EPA must have fully approved the "applicable" SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of "applicable" as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If "applicable requirements" were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. West Virginia submitted its redesignation request on March 5, 2012, but the D.C. Circuit Court did not issue its decision remanding EPA's 1997 $PM_{2.5}$ implementation rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require West Virginia's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the D.C. Circuit Court announced only on January 4, 2013, would be to give retroactive effect to such requirements when the State had no notice that it was required to meet them. The D.C. Circuit Court recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman*, 285 F.3d 63 (D.C. Cir. 2002),[2] where it upheld the D.C. District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the D.C. Circuit Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The D.C. Circuit Court rejected this view, stating that applying it "would likely impose large costs on States, which would face fines

[1] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

[2] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit Court decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA*. 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time." *Id.* at 68. Similarly, it would be unreasonable to penalize West Virginia by rejecting its redesignation request for an area that is already attaining the 1997 $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the D.C. Circuit Court in *Sierra Club* v. *Whitman.*

b. Subpart 4 Requirements and Parkersburg-Marietta Area's Redesignation Request

Even if EPA were to take the view that the D.C. Circuit Court's January 4, 2013 decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the State submitted its redesignation request, EPA proposes to determine that the Parkersburg-Marietta Area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Parkersburg-Marietta Area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Parkersburg-Marietta Area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM_{10}[3] nonattainment areas, and under the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* "State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990," (57 FR 13498, April 16, 1992) (the "General Preamble"). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent "subsumed by, or integrally related to, the more specific PM_{10} requirements." (57 FR 13538, April 16, 1992). EPA's December 11, 2012 NPR for this redesignation action addressed how the Parkersburg-Marietta Area meets the requirements for redesignation under subpart 1. These subpart 1 requirements include, among other things, provisions for attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, EPA is considering the Parkersburg-Marietta Area to be a "moderate" $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as "moderate" nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a "serious" nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[4] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[5] when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that: "The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." *See* General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that: "[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas." *Id.* EPA similarly stated in its 1992 Calcagni memorandum that, "The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard."

It is evident that even if we were to consider the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA* to

[3] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller.

[4] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

[5] I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

mean that attainment-related requirements specific to subpart 4 should be imposed retroactively[6] and thus are now past due, those requirements do not apply to an area that is attaining the 1997 $PM_{2.5}$ standard, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) of the CAA since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret "applicable requirements" in the redesignation context. *See Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior "Clean Data Policy" rulemakings for the PM_{10} NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* "Determination of Attainment for Coso Junction Nonattainment Area," (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed PM_{10} redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47, October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

In its December 11, 2012 NPR for this action, EPA proposed to determine that the Parkersburg-Marietta Area has attained the 1997 $PM_{2.5}$ NAAQS and therefore meets the attainment-related plan requirements of subpart 1. Under its longstanding interpretation, EPA is proposing to determine here that the Area also meets the attainment-related plan requirements of subpart 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under sections 172(c)(1) and 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency requirements under section 172(c)(9) of the CAA are satisfied for purposes of evaluating the redesignation request.

c. Subpart 4 and Control of $PM_{2.5}$ Precursors

The DC Circuit Court in *NRDC* v. *EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the DC Circuit Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for PM_{10} has allowed for control of PM_{10} precursors such as NO_x from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, section 189(e) of the CAA specifically provides that control requirements for major stationary sources of direct PM_{10} shall also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors "do not contribute significantly to PM_{10} levels which exceed the standard in the area."

EPA's 1997 $PM_{2.5}$ Implementation Rule, remanded by the DC Circuit Court, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was "not required to address VOC [and NH_3] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and NH_3] emissions in the State for control measures." EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of NH_3 and VOC in specific areas where that was necessary.

The DC Circuit Court in its January 4, 2013 decision made reference to both section 189(e) and 40 CFR 51. 1002, and stated that, "In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that NH_3 and VOCs are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions." *NRDC* v. *EPA*, at 27, n.10.

Elsewhere in the DC Circuit Court's opinion, however, the Court observed: "NH_3 is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. *See* 42 U.S.C. § 7513a(e) [section 189(e)]." *Id.* at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignation of the Parkersburg-Marietta Area is consistent with the DC Circuit Court's decision on this aspect of subpart 4. First, while the DC Circuit Court, citing section 189(e), stated that "for a PM_{10} area governed by subpart 4, a precursor is presumptively regulated," the DC Circuit Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ implementation rule provisions regarding NH_3 and VOC as precursors. The DC Circuit Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding NH_3 and VOC as $PM_{2.5}$ precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of Parkersburg-Marietta Area, EPA believes that doing so is consistent with proposing redesignation of the Area for the 1997 $PM_{2.5}$ standard. The Parkersburg-Marietta Area has attained the standard without any specific additional controls of NH_3 and VOC emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM_{10} precursors.[7] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of NH_3 and VOC. Thus, we must address here whether additional controls of NH_3 and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the Parkersburg-Marietta Area for the 1997 annual $PM_{2.5}$

[6] As EPA has explained above, we do not believe that the D.C. Circuit Court's January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

[7] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

standard. As explained below, we do not believe that any additional controls of NH_3 and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). *See* 57 FR 13542. EPA in this supplemental proposal proposes to determine that the West Virginia SIP has met the provisions of section 189(e) with respect to NH_3 and VOCs as precursors. This proposed supplemental determination is based on EPA's findings that (1) the Parkersburg-Marietta Area contains no major stationary sources of NH_3, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[8] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the Parkersburg-Marietta Area, which is attaining the 1997 annual $PM_{2.5}$ standard, at present VOC and NH_3 precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual $PM_{2.5}$ standard in the Parkersburg-Marietta Area. *See* 57 FR 13539–42.

EPA notes that its 1997 $PM_{2.5}$ implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if EPA regards the DC Circuit Court's January 4, 2013 decision as calling for "presumptive regulation" of NH_3 and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring West Virginia to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.[9] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[10] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Parkersburg-Marietta Area has already attained the 1997 annual $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the DC Circuit Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of West Virginia's request for redesignation of the Parkersburg-Marietta Area. In the context of a redesignation, the Area has shown that it has attained the standard. Moreover, the State has shown and EPA has proposed to determine that attainment in this Area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the DC Circuit Court as precluding redesignation of the Parkersburg-Marietta Area to attainment for the 1997 $PM_{2.5}$ NAAQS at this time.

In summary, even if West Virginia were required to address precursors for the Parkersburg-Marietta Area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded $PM_{2.5}$ implementation rule, EPA would still conclude that the Area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3(E)(ii) and (v) of the CAA.

d. Maintenance Plan and Evaluation of Precursors

With regard to the redesignation of West Virginia, in evaluating the effect of the DC Circuit Court's remand of EPA's implementation rule, which included presumptions against consideration of NH_3 and VOC as $PM_{2.5}$ precursors, EPA in this supplemental proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv) of the CAA. To begin with, EPA notes that the Parkersburg-Marietta Area has attained the 1997 annual $PM_{2.5}$ standard and that the State has shown that attainment of that standard is due to permanent and enforceable emission reductions.

In the December 11, 2012 NPR, EPA proposed to determine that the State's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 annual $PM_{2.5}$ standard in the Parkersburg-Marietta Area. EPA therefore, believes that the only additional consideration related to the maintenance plan requirements that results from the DC Circuit Court's January 4, 2013 decision, is that of assessing the potential role of NH_3 and VOCs in demonstrating continued maintenance in this Area. As explained below, based upon documentation provided by the State and supporting information, EPA believes that the maintenance plan for the Parkersburg-Marietta Area need not include any additional emission reductions of NH_3 or VOCs in order to provide for continued maintenance of the standard.

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this Area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total NH_3 emissions throughout the Parkersburg-Marietta Area are very low, estimated to be less than 2,000 tons per year. *See* Table 2 below. This amount of NH_3 emissions appears especially small in comparison to the total amounts of SO_2, NO_X, and even direct $PM_{2.5}$ emissions from sources in the Area. Third, as described below, available information shows that no precursor, including NH_3 and VOCs, is expected to increase over the maintenance period so as to

[8] The Parkersburg-Marietta Area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations (45CSR21) and various onroad and nonroad motor vehicle control programs.

[9] *See, e.g.*, "Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM_{10} Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM_{10} Standards," 69 FR 30006 (May 26, 2004) (approving a PM_{10} attainment plan that impose controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or NH_3 emissions).

[10] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

interfere with or undermine the State's maintenance demonstration.

West Virginia's maintenance plan shows that emissions of direct $PM_{2.5}$, SO_2, and NO_X are projected to decrease by 130 tons per year (tpy), 111,095 tpy, and 22,456 tpy, respectively, over the maintenance period. *See* Table 1 below. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 $PM_{2.5}$ NAAQS show that VOC emissions are projected to decrease by 2,424 tpy between 2007 and 2020. NH_3 emissions are projected to increase by 130 tpy between 2007 and 2020. *See* Table 2 below. Given that the Parkersburg-Marietta Area is already attaining the 1997 annual $PM_{2.5}$ NAAQS even with the current level of emissions from sources in the Area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the State is addressing for purposes of the 1997 annual $PM_{2.5}$ NAAQS indicate that the Area should continue to attain the NAAQS following the precursor control strategy that the State has already elected to pursue. Even if NH_3 and VOC emissions were to increase unexpectedly between 2015 and 2022, the overall emissions reductions projected in direct $PM_{2.5}$, SO_2, and NO_X would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential $PM_{2.5}$ precursors will not increase to the extent that they will cause monitored $PM_{2.5}$ levels to violate the 1997 $PM_{2.5}$ standard during the maintenance period.

TABLE 1—COMPARISON OF 2008, 2015, 2022 SO_2, NO_X, AND DIRECT $PM_{2.5}$ EMISSION TOTALS IN TONS PER YEAR (TPY) FOR THE PARKERSBURG-MARIETTA NONATTAINMENT AREA

	SO_2	NO_X	$PM_{2.5}$
2008	159,535	35,412	3,686
2015	77,294	18,509	3,648
2022	48,439	12,985	3,557
Decrease from 2008 to 2022	111,095	22,426	130

TABLE 2—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE PARKERSBURG-MARIETTA NONATTAINMENT AREA [11]

Sector	VOC			NH_3		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point	1,526	1,529	3	601	759	158
Area	2,180	2,157	−23	774	793	19
Nonroad	1,452	763	−689	2	2	0
On-road	2,471	755	−1,716	89	42	−47
Fires	257	257	0	18	18	0
Total	7,885	5,461	−2,424	1,484	1,614	130

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current air quality design value for the Area is 12.3 micrograms per cubic meter ($\mu g/m^3$) (based on 2009–2011 air quality data), which is well below the 1997 annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$. Moreover, the modeling analysis conducted for the RIA for the 2012 $PM_{2.5}$ indicates that the design value for this Area is expected to continue to decline through 2020. In the RIA analysis, the 2020 modeled design value for the Parkersburg- Marietta Area is 9.2 $\mu g/m^3$. Given that precursor emissions are projected to decrease through 2020, it is reasonable to conclude that monitored $PM_{2.5}$ levels in this Area will also continue to decrease in 2020.

Thus, EPA believes that there is ample justification to conclude that the Parkersburg-Marietta Area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to $PM_{2.5}$. After consideration of the D.C. Circuit Court's January 4, 2013 decision, and for the reasons set forth in this supplemental notice, EPA continues to propose approval of West Virginia's maintenance plan and it's request to redesignate the Parkersburg-Marietta Area to attainment for the 1997 annual $PM_{2.5}$ standard.

III. Proposed Action

After fully considering the D.C. Circuit Court's decisions in *EME Homer City* on EPA's CSAPR rule and *NRDC* v. *EPA* on EPA's 1997 $PM_{2.5}$ Implementation rule, EPA in this supplemental notice is proposing to proceed with approval of the request to redesignate the Parkesburg-Marietta Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, the associated maintenance plan, and the insignificance determination for onroad motor vehicle contribution of $PM_{2.5}$, NO_X and SO_2. EPA is seeking comment only on the issues raised in its supplemental proposal, and is not reopening comment on other issues addressed in its prior proposal.

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office

[11] These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 $PM_{2.5}$ NAAQS. NH_3 increases are due to some (5%) increase in fertilizer application, but mostly from electric generating unit (EGU), and with huge SO_2 (point) reductions (213,738 in 2007 and 16,881 in 2020) would offset any increases.

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 proposed rule pertaining to the redesignation of the West Virginia portion of the Parkersburg-Marietta WV–OH 1997 annual $PM_{2.5}$ nonattainment area, 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

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness Areas.

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

Dated: June 13, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–16060 Filed 7–5–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60, 61, and 63

[EPA–R08–OAR–2012–0764; FRL–9828–5]

Delegation of Authority to the Southern Ute Indian Tribe To Implement and Enforce National Emissions Standards for Hazardous Air Pollutants and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking final action to approve the Southern Ute Indian Tribe's (SUIT) July 3, 2012 request for delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS). This request establishes and requires SUIT to administer a NSPS and NESHAPs program per EPA regulations. The delegation is facilitated by SUIT's treatment "in the same manner as a state" (TAS) document, per CAA requirements.

DATES: Written comments must be received on or before August 7, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0764, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: olson.kyle@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Kyle Olson, Air Program, Mailcode 8P–AR, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6002 or *olson.kyle@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is taking final action approving Southern Ute Indian Tribe's (SUIT) July 3, 2012 request for delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS). This request establishes and requires SUIT to administer a NSPS and NESHAPs program per EPA regulations. SUIT met the requirements of Clean Air Act (CAA) sections 111(c) and 112(l) and 40 CFR Subpart E for full approval to administer CAA 111 and CAA 112 programs entirely due to its prior approval of its CAA Title V Part 70 Permitting Program. The delegation is facilitated by SUIT's treatment "in the same manner as a state" (TAS) document, per CAA section 301(d)(2). This action is being taken under section 111 and 112 of the CAA.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the delegation as a direct final rule without prior proposal because the Agency views this as a noncontroversial delegation and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must 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. See the information provided in the direct final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: May 30, 2013.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2013–16328 Filed 7–5–13; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Endowment for the Humanities

Institute of Museum and Library Services

45 CFR Part 1100

RIN 3135–AA26; 3136–AA31; 3137–AA23

Statement for the Guidance of the Public—Organization, Procedure and Availability of Information

AGENCY: National Endowment for the Arts, National Endowment for the Humanities, and Institute of Museum and Library Services.

ACTION: Proposed rule.

SUMMARY: The National Endowment for the Arts (NEA), the National Endowment for the Humanities (NEH), and the Institute of Museum and Library Services (IMLS) are proposing to amend their joint Freedom of Information Act (FOIA) regulations, to remove any reference to the NEH, the Federal Council on the Arts and the Humanities (FCAH), an agency for which the NEH provides legal counsel, and the IMLS. The NEA, the NEH and the IMLS are amending these joint regulations because each agency has proposed or plans to propose its own separate FOIA regulations.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before September 6, 2013.

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

- *Email: Gencounsel@neh.gov.* Please include "NFAH FOIA Regulations" in the subject line of the message.
- *FAX:* (202) 606–8600. Please send your comments to the attention of Gina Raimond.
- *Mail:* Gina Raimond, Attorney Advisor, Office of the General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Ave. NW., Room 529, Washington, DC 20506. To ensure proper handling, please reference "NFAH FOIA Regulations" on your correspondence.

FOR FURTHER INFORMATION CONTACT: Gina Raimond, Attorney Advisor, Office of the General Counsel, National Endowment for the Humanities, 202–606–8322.

SUPPLEMENTARY INFORMATION: The NEA, the NEH, the IMLS, and the FCAH make up the National Foundation on the Arts and Humanities (Foundation). The Foundation was established by the National Foundation on the Arts and Humanities Act of 1965, 20 U.S.C. 951 *et seq.* The NEA, the NEH (for itself and on behalf of the FCAH), and the former Institute of Museum Services (now, the IMLS) last revised the joint regulations on December 21, 1987. Each of these agencies has now decided to issue separate FOIA regulations; therefore, they are proposing to amend 45 CFR part 1100. At this time, NEH has proposed new FOIA regulations for itself and the FCAH in 45 CFR part 1171, and IMLS has proposed new FOIA regulations for itself in 45 CFR part 1184. NEA intends to propose new FOIA regulations for itself in 45 CFR part 1160.

E.O. 12866, Regulatory Review

NEA, NEH, and IMLS have determined that the proposed rule is not a "significant regulatory action" under Executive Order 12866 and therefore is not subject to Office of Management and Budget (OMB) Review.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), NEA, NEH, and IMLS have determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records that agencies process for requesters. Thus, fees assessed for processing FOIA requests are nominal.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, the 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.

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, as amended. 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 the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

NEA, NEH, and IMLS have determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply to the proposed rule because the rule does not contain information collection requirements that require OMB approval.

List of Subjects in 45 CFR Part 1100

Administrative practice and procedure, Freedom of Information.

For the reasons stated in the preamble, the NEA, the NEH (for itself and on behalf of the FCAH), and the IMLS propose to amend 45 CFR part 1100 as follows:

PART 1100—STATEMENT FOR THE GUIDANCE OF THE PUBLIC—ORGANIZATION, PROCEDURE AND AVAILABILITY OF INFORMATION

■ 1. The authority citation for part 1100 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 99–570, 100 Stat. 3207.

■ 2. In § 1100.1 revise paragraph (a) to read as follows:

§ 1100.1 Definitions.

(a) *Agency* means the National Endowment for the Arts.

* * * * *

■ 3. Revise § 1100.2 to read as follows:

§ 1100.2 Organization.

The National Foundation on the Arts and the Humanities was established by the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 951 *et seq.* The Foundation is composed of the National Endowment for the Arts, the National Endowment for the Humanities, the Institute of Museum and Library Services, and the Federal Council on the Arts and the Humanities. The Institute of Museum and Library Services became a part of the National Foundation on the Arts and the Humanities pursuant to the Museum and Library Services Act, as amended (20 U.S.C. 9102). Each Endowment is headed by a Chairman and has an advisory national council composed of 26 presidential appointees. The Institute of Museum and Library Services is headed by a Director and has a National

Museum and Library Services Board composed of 20 presidential appointees, the Director, and IMLS's Deputy Directors for the Offices of Library Services, and Museum Services. The Federal Council on the Arts and the Humanities, comprised of Executive branch officials and appointees of the legislative branch, is authorized to make agreements to indemnify against loss or damage for certain exhibitions and advise on arts and humanities matters. The National Endowment for the Humanities, the Federal Council on the Arts and Humanities, and the Institute of Museum and Library Services no longer follow the regulations under this part. The procedures for disclosing records of the National Endowment for the Humanities and the Federal Council on the Arts and the Humanities are available at 45 CFR part 1171. The procedures for disclosing records of the Institute of Museum and Library Services are available at 45 CFR part 1184.

■ 4. In § 1100.3 revise paragraphs (a), (b), and (c) to read as follows:

§ 1100.3 Availability of information to the public.

(a) Descriptive brochures of the organization, programs, and function of the National Endowment for the Arts are available upon request. Inquiries involving work of the National Endowment for the Arts should be addressed to the National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506. The telephone number of the National Endowment for the Arts is (202) 682–5400.

(b) The head of the National Endowment for the Arts is responsible for the effective administration of the Freedom of Information Act. The head of the National Endowment for the Arts pursuant to this responsibility hereby directs that every effort be expended to facilitate service to the public with respect to the obtaining of information and records.

(c) Requests for access to records of the National Endowment for the Arts may be filed by mail with the General Counsel of the National Endowment for the Arts or by email at *FOIA@arts.gov*. All requests should reasonably describe the record or records sought. Requests submitted should be clearly identified as being made pursuant to the Freedom of Information Act.

■ 5. Revise § 1100.4 to read as follows:

§ 1100.4 Current index.

The National Endowment for the Arts shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated and which is required to be made available pursuant to 5 U.S.C. 552(a)(1) and (2). Publication and distribution of such indices has been determined by the Foundation to be unnecessary and impracticable. The indices will be provided upon request at a cost not to exceed the direct cost of the duplication.

■ 6. In § 1100.5 revise paragraphs (a), (b)(1), and the first sentence of paragraph (c) to read as follows:

§ 1100.5 Agency procedures for handling requests for documents.

(a) Upon receiving a request for documents in accordance with the rules of this part, the General Counsel or respective Assistant General Counsel serving as the Freedom of Information Act Officer of the National Endowment for the Arts shall determine whether or not the request shall be granted in whole or in part.

* * * * *

(b)(1) Any party whose request for documents has been denied in whole or in part may file an appeal no later than ten (10) working days following receipt of the notification of denial. Appeals must be addressed to the Chairman, National Endowment for the Arts, Washington, DC 20506.

* * * * *

(c) In unusual circumstances, the time limits prescribed to determine a request for documents with respect to initial actions or actions on appeal may be extended by written notice from the General Counsel or respective Assistant General Counsel serving as the Freedom of Information Act Officer of the National Endowment for the Arts. * * * * * * * * * *

■ 7. In § 1100.7 revise the introductory text and paragraph (a) to read as follows:

§ 1100.7 Foundation report of actions.

On or before March 1 of each calendar year, the National Endowment for the Arts shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. The report shall include:

(a) The number of determinations made by National Endowment for the Arts not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination;

* * * * *

India Pinkney,

General Counsel, National Endowment for the Arts.

Michael P. McDonald,

General Counsel, National Endowment for the Humanities.

Andrew Christopher,

Assistant General Counsel, Institute of Museum and Library Services.

[FR Doc. 2013–15620 Filed 7–5–13; 8:45 am]

BILLING CODE 7537–01–P; 7536–01–P; 7036–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards: CAS 413 Pension Adjustments for Extraordinary Events

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, is conducting fact-finding for the development of a Staff Discussion Paper (SDP) on CAS 413 Pension Adjustments for Extraordinary Events. This is the first step in a four-step process that may result in a final rule. As part of these efforts, the public is invited to attend two public meetings that are scheduled for July 31, 2013 and August 14, 2013. To facilitate fact-finding, the CAS Board encourages the submission of written comments for consideration in the drafting of the SDP.

DATES:

Registration date for public meetings: Advance registration for the public meetings via email must be submitted by 5:00 p.m. (Eastern Standard Time), July 29 (for the July 31, 2013 meeting) and August 12 (for the August 14, 2013 meeting). Please follow the procedures at "Advance Registration for the Public Meetings."

Comment date: Comments must be in writing and must be submitted by September 6, 2013.

Public Meetings for Fact-Finding

Dates of public meetings:

—Wednesday, July 31, 2013, 8:30 a.m.–12:30 p.m.

—Wednesday, August 14, 2013, 8:30 a.m.–12:30 p.m.

ADDRESSES:

Site of public meetings: The Offices of the Professional Services Council, 4401 Wilson Blvd., Suite 1110, Arlington, VA 22203.

For directions, see: http://www.pscouncil.org/i/a/Directions_to_PSC/c/a/Directions_to_PSC.aspx?hkey=631433d0-29e9-4cc5-b438-419a7891e6bd.

Advance Registration for Public Meetings

To advance register for the public meeting, submit your name, title, organization, postal address, telephone number, and email address in an email to *casb2@omb.eop.gov* with "Registration—CAS 413 adjustments for extraordinary events" in the subject line. To ensure seating due to space constraints, potential attendees of the public meetings are strongly encouraged to register in advance for the public meetings. Please register by no later than 5:00 p.m. on either July 29 for the July 31, 2013 meeting, or August 12 for the August 14, 2013 meeting. Attendees will be sent email confirmation of their attendance for seating purposes by the day prior to the meeting. If the number of registrants exceeds the seating capacity, priority will be given to the registrants on the basis of the date of registration while considering the need for broad industry representation at the meeting. Participants who attend the meetings without an advance registration will not be assured of seating, or attendance if the maximum room capacity is reached.

Addresses for Submission of Comments

All comments to this notice must be in writing. In lieu of, or in addition to, participating in the public meeting, interested parties may submit written comments. Attendees to the public meetings are encouraged to submit written comments in writing so that their comments can be given due consideration. Electronic comments may be submitted in any one of three ways:

1. *Federal eRulemaking Portal:* Comments may be submitted via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on issues that agencies have published in the **Federal Register**, and that are open for comment. Simply type "Fact-finding—CAS 413 adjustments for extraordinary events" (without quotation marks) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments;

2. *Email:* Comments may be included in an email address sent to *casb2@omb.eop.gov*. The comments may be submitted in the text of the email message or as an attachment. Type "Fact-finding—CAS adjustment for extraordinary events" in the subject line.

3. *Facsimile:* Comments may also be submitted by facsimile to (202) 395–5105. Type "Fact-finding—CAS adjustment for extraordinary events" on the coversheet; or

4. *Mail:* If you choose to submit your responses via regular mail, please address them to: Office of Federal Procurement Policy, 725 17th Street NW., Room 9013, Washington, DC 20503, ATTN: Raymond J.M. Wong. Due to delays caused by the screening and processing of mail, respondents are strongly encouraged to submit responses electronically.

Be sure to include your name, title, organization, postal address, telephone number, and email address in the text of your comments and reference "Fact-finding—CAS adjustment for extraordinary events" in the subject line irrespective of how you submit your comments. Comments received by the date specified in this notice will be included as part of the official record. Comments delayed due to use of regular mail may not be considered.

Please note that all public comments received will be available in their entirely at *http://www.whitehouse.gov/omb/casb_index_public_comments/* and *http://www.regulations.gov* after the close of the comment period. Accordingly, you should not include any information that you would object to being disclosed.

FOR FURTHER INFORMATION CONTACT: Raymond J.M. Wong, Director, Cost Accounting Standards Board (telephone: 202–395–6805; email: *Raymond_wong@omb.eop.gov*).

SUPPLEMENTARY INFORMATION

A. Regulatory Process—Changes to 48 CFR Part 9904

Rules, regulations, and standards issued by the CAS Board are codified at 48 CFR Chapter 99. This notice addresses fact-finding for the development of a Staff Discussion Paper (SDP) on CAS 413 Pension Adjustments for Extraordinary Events. CAS 413 is a Standard, and as such is subject to the statutorily prescribed rulemaking process for the promulgation of a Standard at 41 U.S.C. 1502(c). The process that may ultimately culminate in a final rule generally consists of the following four steps:

1. Prior to the adoption of a proposed Standard, consult with interested persons in fact-finding concerning the following: the probable costs of implementation compared to the probable benefits; advantages, disadvantages and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, Government contracts; and the scope of, and alternatives available to, the action proposed to be taken;

2. Prepare and publish a SDP based on the results of the fact-finding for comments;

3. Promulgate an Advance Notice of Proposed Rulemaking for comments; and

4. Promulgate a Notice of Proposed Rulemaking for comments.

Fact-finding for the development of the SDP, the subject of this notice of public meetings, is the first step in a four-step statutory rulemaking process that may ultimately culminate in a final rule with respect to a Standard.

B. Background and Summary

In response to the Notice of Proposed Rulemaking (NPRM) on pension harmonization (the CAS Pension Harmonizatoin Rule, 75 FR 25982, May 10, 2010), the CAS Board received public comments expressing concerns that 48 CFR 9904.413–50(c)(12) (otherwise known as CAS 413–50(c)(12)) on segment closings was not being revised to harmonize with the Pension Protection Act of 2006 (PPA) (Pub. L. 109–280, 120 Stat. 780). When the CAS Pension Harmonization Rule was published as a Final Rule (76 FR 81296, December 27, 2011), the CAS Board summarized and responded to these comments under Topic 10, "Segment Closings and Benefit Curtailments." The CAS Board stated that it limited the amendment of 9904.413–50(c)(12) provisions in the CAS Pension Harmonization Rule to the exemption of benefit curtailments mandated by the Employee Retirement Income Security Act of 1974 (ERISA) by 26 U.S.C. 436. The CAS Board explained that other issues and problems with the current CAS segment closing and benefit curtailment provisions were beyond the scope of pension harmonization required by paragraph (d) of section 106 of the PPA, and should be addressed in a separate case. The CAS Board established a Working Group (WG) on pension adjustments for extraordinary events to support its consideration of revisions to CAS 413. The WG, comprised of the

staff and subject matter experts from the Departments of Defense (DOD), Energy (DOE), Health and Human Services (HHS), the National Aeronautical Space Administration (NASA), and the Pension Benefit Guaranty Corporation (PBGC), has been tasked by the CAS Board to frame and evaluate issues, and develop options to address them. The CAS Board has directed the staff, supported by the WG, to conduct fact-finding in order to develop a Staff Discussion Paper for the CAS Board's consideration.

Subsequently, the General Accountability Office (GAO) observed that the CAS Board did not harmonize the discount rates used for settling up if a contractor curtails a pension plan. This means that liabilities could be calculated differently under ERISA and CAS rules if a contractor terminates a plan or freezes new benefit accruals for all participants. GAO recommended that the CAS Board set a schedule for revising the part of CAS 413 dealing with the settlement of pension plan curtailments (in GAO–13–158, "PENSION COSTS ON DOD CONTRACTS—Additional Guidance Needed to Ensure Costs are Consistent and Reasonable," dated January 2013). The CAS Board reviewed the report, and advised GAO that its tasking to the WG generally addresses the GAO recommendation. In addition, the CAS Board Chair advised Congress that while the CAS Board has begun the fact-finding step of the four-step CAS rulemaking process, it has not yet set a schedule as there are a number of factors that may affect timing, such as the extent and complexity of comments received in response to the SDP, that make a set schedule too speculative at this time.

The staff, supported by the WG, has begun research on the subject matter. The CAS Board has authorized the WG to consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of a possible amendment to the Standards, specifically CAS 412 and 413.

In additional to potential revisions to 9904.413–50(c)(12), the WG has identified other CAS 412 and 413 provisions that are potentially directly impacted by revisions to CAS 413–50(c)(12).

These provisions include:

- 412–50(c)(2)(ii) Assignable Cost Credits,
- 413–50(c)(3) Pension Plan Merger or Spin-Off,
- 413–50(c)(5) Initial Allocation of Plan Assets,
- 413–50(c)(8) Participant Transfers Between Segments, and
- 413–50(c)(9) Inactive Segments.
- Definitions of Segment Closing and Benefit Curtailment
- CAS 412–50(b)(7) Minimum Actuarial Liability

C. Issues To Consider Relative to CAS 413 Pension Adjustments for Extraordinary Events

To focus the fact-finding to address CAS 413 pension adjustments for extraordinary events with any revisions to CAS 413–50(c)(12) and associated provisions, the WG has prepared a series of topical questions for the consideration of interested parties in the development of their comments on the subject matter. The WG will consider all comments germane to its tasking from the CAS Board, i.e., CAS 413 pension adjustments for extraordinary events, and not just the comments responding to the list of scenarios and questions, in drafting the SDP. Comments that are deemed by the WG to be outside the scope of the CAS Board's tasking to the WG will not be considered in developing the SDP. The format of this list of questions presents a scenario based on a CAS subsection, paragraph or subparagraph followed by a series of questions on the scenario. The order of the scenarios and questions does not imply any assessment of their relative importance by the CAS Board or WG.

1. *Issues related to CAS 413–50(c)(12):* If a segment is closed, if there is a pension plan termination, or if there is a curtailment of benefits, the contractor shall determine the difference between the actuarial accrued liability for the segment and the market value of the assets allocated to the segment, irrespective of whether or not the pension plan is terminated. The difference between the market value of the assets and the actuarial accrued liability for the segment represents an adjustment of previously-determined pension costs.

(a) Should all benefit curtailments be excluded?

(b) The original promulgation of CAS 413 implemented adjustments for large actuarial gains from "abnormal forfeiture." The 1995 amendments introduced the concept of a true-up of assets and liabilities. What should be the purpose of this provision in the future?

(c) There are few plans with benefit formulas based on final pay. Qualified plans can no longer have significant delays for vesting. Is the concept of an "abnormal forfeiture" still valid?

(d) Assets and liabilities were accumulated across many years and market environments and cycles—Is a "mark-to-market" true-up still appropriate?

2. *Issues related to CAS 413–50(c)(12)(i):* The determination of the actuarial accrued liability shall be made using the accrued benefit cost method. The actuarial assumptions employed shall be consistent with the current and prior long term assumptions used in the measurement of pension costs. If there is a pension plan termination, the actuarial accrued liability shall be measured as the amount paid to irrevocably settle all benefit obligations or paid to the Pension Benefit Guarantee Corporation (PBGC). How should the actuarial accrued liability be measured for the following conditions:

(a) If the Minimum Actuarial Liability is greater than accrued benefit cost method liability in the period the segment closing occurs?

(b) If benefit obligation is settled by payment of lump sums and/or annuity?

(c) If there are "changed conditions" due to segment closing, i.e., is the retirement assumption still valid?

(d) If there have been prior mergers, spin-offs or other reorganizations?

(e) If liabilities were accumulated across many years and market environments/cycles—Is a "mark-to-market" true-up still appropriate?

3. *Issues related to CAS 413–50(c)(12)(ii):* In computing the market value of assets for the segment, if the contractor has not already allocated assets to the segment, such an allocation shall be made in accordance with the requirements of paragraphs (c)(5)(i) and (ii) of this subsection [i.e., CAS 413–50]. The market value of the assets shall be reduced by the accumulated value of prepayment credits, if any. Conversely, the market value of the assets shall be increased by the current value of any unfunded actuarial liability separately identified and maintained in accordance with CAS 412–50(a)(2).

(a) How should CAS 413–50(c)(5) handle the lack of historical records on plan contributions, benefits and earnings (see *Teledyne, Inc.* v. *U.S.*, 50 Fed. Cl. 155 (2001), *aff'd sub nom*, 316 F.3d 1366 (Fed. Cir. 2003))? In other words, what if there are incomplete; inadequate, or lost historical records because adequate detailed records were NOT kept for some period of time during the life of the segment?

(b) What if there have been prior mergers, spin-offs or other reorganizations that cause tracing the segment's legacy difficult?

(c) Assets were accumulated across many years and market environments

and cycles—Is a "mark-to-market" true-up still appropriate?

4. Issues related to CAS 413–50(c)(12)(iii): The calculation of the difference between the market value of the assets and the actuarial accrued liability shall be made as of the date of the event (e.g., contract termination, plan amendment, plant closure) that caused the closing of the segment, pension plan termination, or curtailment of benefits. If such a date is not readily determinable, or if its use can result in an inequitable calculation, the contracting parties shall agree on an appropriate date.

(a) Does the CAS Board need to address the intent or use of the phrase: "If its use can result in an inequitable calculation?"

5. Issues related to CAS 413–50(c)(12)(iv): Pension plan improvements adopted within 60 months of the date of the event which increase the actuarial accrued liability shall be recognized on a prorata basis using the number of months the date of adoption preceded the event date. Plan improvements mandated by law or collective bargaining agreement are not subject to this phase-in.

(a) What about automatic Internal Revenue Code (IRC) sections 415 (Limitations on benefits and contribution under qualified plans) and 401(a)(17) (Compensation limit) improvements?

(b) What about "prudent" benefit improvements and how could "prudent" be determined?

(c) What if a plan is replaced by a new defined benefit plan or replacement defined benefit plan?

6. Issues related to CAS 413–50(c)(12)(v): If a segment is closed due to a sale or other transfer of ownership to a successor in interest in the contracts of the segment and all of the pension plan assets and actuarial accrued liabilities pertaining to the closed segment are transferred to the successor segment, then no adjustment amount pursuant to this paragraph (c)(12) is required. If only some of the pension plan assets and actuarial accrued liabilities of the closed segment are transferred, then the adjustment amount required under this paragraph (c)(12) shall be determined based on the pension plan assets and actuarial accrued liabilities remaining with the contractor. In either case, the effect of the transferred assets and liabilities is carried forward and recognized in the accounting for pension cost at the successor contractor.

(a) What happens when the actual assets transferred are not based on the assets accumulated and accounted for under CAS 412 and 413, i.e., assets transfers based on IRC 414(l) (Merger and consolidation of plans or transfers of plan assets) or the negotiated sales agreement?

(b) How should you handle the difference between the transferred assets and the assets allocated to the segment under CAS 413?

(c) If the segment is partially sold and partially retained, how are the plan assets and liabilities accounted for? Does the CAS Board need to address how plan assets and liabilities are divided and transferred?

(d) Should the provisions on applicable interest rate used for CAS 413–50(c)(12)(i) purposes reflect whether the contractor has retained the plan liability or settled the liability?

7. Issues related to CAS 413–50(c)(12)(vi): The Government's share of the adjustment amount determined for a segment shall be the product of the adjustment amount and a fraction. The adjustment amount shall be reduced for any excise tax imposed upon assets withdrawn from the funding agency of a qualified pension plan. The numerator of such fraction shall be the sum of the pension plan costs allocated to all contracts and subcontracts (including Foreign Military Sales) subject to this Standard during a period of years representative of the Government's participation in the pension plan. The denominator of such fraction shall be the total pension costs assigned to cost accounting periods during those same years. This amount shall represent an adjustment of contract prices or cost allowance as appropriate. The adjustment may be recognized by modifying a single contract, several but not all contracts, or all contracts, or by use of any other suitable technique.

(a) How should the lack of historical accrued and allocated cost data be handled?

(b) What if there have been prior mergers, spin-offs or other reorganizations?

8. Issues related to CAS 413–50(c)(12)(vii): The full amount of the Government's share of an adjustment is allocable, without limit, as a credit or charge during the cost accounting period in which the event occurred and contract prices/costs will be adjusted accordingly. However, if the contractor continues to perform Government contracts, the contracting parties may negotiate an amortization schedule, including interest adjustments. Any amortization agreement shall consider the magnitude of the adjustment credit or charge, and the size and nature of the continuing contracts.

(a) If the contractor has other cost-based contracts how is the adjustment credit recognized in future cost accounting periods? Should the contractor create prepayment credit equal to the gross adjustment credit amount?

(b) If the contractor has other cost-based contracts how is the adjustment debit recognized in future cost accounting periods? Should the contractor create an unfunded accrual equal to the gross adjustment charge amount?

(c) What if adjustment is paid into or out of the pension fund?

9. Issues related to CAS 413–50(c)(12)(viii): If a benefit curtailment is caused by a cessation of benefit accruals mandated by ERISA based on the plan's funding level, then no adjustment for the curtailment of benefit pursuant to this paragraph (c)(12) is required. Instead, the curtailment of benefits shall be recognized as follows:

(A) If the written plan document provides that benefit accruals are nonforfeitable once employment service has been rendered and shall be retroactively restored if and when the benefit accrual limitation ceases, then, the contractor may elect to recognize the expected benefit accruals in the actuarial accrued liability and normal cost during the period of cessation for the determination of pension cost in accordance with the provisions of CAS 412 and 413.

(B) Otherwise, the curtailment of benefits shall be recognized as an actuarial gain or loss for the period. The subsequent restoration of missed benefit accruals shall be recognized as an actuarial gain or loss in the period in which the restoration occurs.

(a) Now that the CAS Pension Harmonization Rule been in effect for over a year, have there been any issues related to this subparagraph?

10. General Questions: Besides the questions raised concerning specific provisions within CAS 413–50(c)(12), the staff has identified a few general questions.

(a) Should the CAS Board eliminate CAS 413–50(c)(12) in its entirety, i.e., is this provision still needed?

(b) Should the CAS Board consider special issues related to CAS 413–50(c)(12) when short, non-repetitive contracts (e.g., 5-years) are awarded? Should such contracts be subject to CAS 413–50(c)(12)?

(c) Should the CAS Board amend CAS 412–50(c)(2)(ii) to allow an Assignable Cost Limitation "buffer" to better ensure that the plan or segment has adequate resources in case of segment closings,

plan terminations or sudden market declines?

(d) If the CAS Board continues to require a "true-up" of assets and liabilities or permits an Assignable Cost Limitation Buffer, should the CAS Board remove the CAS 412–50(c)(2)(i) $0 floor and permit negative pension costs instead?

Joseph G. Jordan,

Chair, Cost Accounting Standards Board.

[FR Doc. 2013–16113 Filed 7–5–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R4–ES–2012–0076 and FWS–R4–ES–2013–0029; 4500030113]

RIN 1018–AY08; 1018–AZ51

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Cape Sable Thoroughwort, Florida Semaphore Cactus, and Aboriginal Prickly-Apple, and Designation of Critical Habitat for Cape Sable Thoroughwort

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period; availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the October 11, 2012, proposed rule to list *Chromolaena frustrata* (Cape Sable thoroughwort), *Consolea corallicola* (Florida semaphore cactus), and *Harrisia aboriginum* (aboriginal prickly-apple) as endangered species under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat for *Chromolaena frustrata* under the Act. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for *Chromolaena frustrata* and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before August 7, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decisions on these actions.

ADDRESSES: *Document availability:* You may obtain copies of the October 11, 2012, proposed rule on the internet at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0076 or by mail from the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain a copy of the draft economic analysis at Docket No. FWS–R4–ES–2013–0029.

Written Comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Submit comments on the listing proposal to Docket No. FWS–R4–ES–2012–0076, and submit comments on the critical habitat proposal and the associated draft economic analysis to Docket No. FWS–R4–ES–2013–0029. See **SUPPLEMENTARY INFORMATION** for an explanation of the two dockets.

(2) *By hard copy:* Submit comment on the listing proposal by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2012–0076; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comment on the critical habitat proposal and draft economic analysis by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0029; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Larry Williams, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960; by telephone 772–562–3909; or by facsimile 772–562–4288. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We are reopening the comment period for our proposed listing determination for *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* and our proposed critical habitat designation for *Chromolaena frustrata* that was published in the **Federal Register** on October 11, 2012 (77 FR 61836). We are also specifically seeking comments on the draft economic analysis, which is now available, for the critical habitat designation. We will consider information and recommendations from all interested parties. See **ADDRESSES** for information on where to send your comments.

We are also notifying the public that we will publish two separate rules, one for the final listing determination for *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* and another for the final critical habitat determination for *Chromolaena frustrata*. The final listing rule will publish under the existing docket number, FWS–R4–ES–2012–0076, and the final critical habitat designation will publish under docket number FWS–R4–ES–2013–0029.

We request that you provide comments that are specifically on our listing determination under the existing docket number FWS–R4–ES–2012–0076. We are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of these species and ongoing conservation measures for these species and their habitats.

(4) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

We request that you provide comments that are specifically on the critical habitat determination and draft economic analysis under docket number FWS–R4–ES–2013–0029. We are particularly interested in comments concerning:

(5) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether

there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(6) Specific information on:

(a) The amount and distribution of *Chromolaena frustrata* habitat;

(b) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why; and

(c) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(7) Land use designations and current or planned activities in the subject areas occupied by *Chromolaena frustrata* or proposed to be designated as critical habitat, and possible impacts of these activities on these species and proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on *Chromolaena frustrata* and proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(11) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(12) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(13) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

If you submitted comments or information on the proposed rule (77 FR 61836) during the initial comment period from October 11, 2012, to December 10, 2012, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determinations. Our final determinations will take into consideration all written comments and any additional information we receive during both comment periods.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0076 (for the proposed listings), and at Docket No. FWS–R4–ES–2013–0029 (for the proposed critical habitat and draft economic analysis) or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2012–0076 and the draft economic analysis at Docket No. FWS–R4–ES–2013–0029, or by mail from the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for *Chromolaena frustrata* in this document. For more information on previous Federal actions concerning *C. frustrata*, the species, or its habitat, refer to the proposed listing rule and proposed designation of critical habitat published in the **Federal Register** on October 11, 2012 (77 FR 61836), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R4–ES–2012–0076) or from the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

On October 11, 2012, we published a proposed rule to designate critical habitat for *Chromolaena frustrata* (77 FR 61836). We proposed to designate approximately 3,466 hectares (8,565 acres) in nine units located in Miami-Dade and Monroe Counties, Florida, as critical habitat. That proposal had a 60-day comment period, ending December 10, 2012.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may

result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of *Chromolaena frustrata,* the benefits of critical habitat include public awareness of the presence of *C. frustrata* and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for *C. frustrata* due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific and commercial data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for *Chromolaena frustrata*. The DEA separates conservation measures into two distinct categories according to "without critical habitat" and "with critical habitat" scenarios. The "without critical habitat" scenario represents the baseline for the analysis, considering protections otherwise afforded to the *Chromolaena frustrata* (e.g., under the Federal listing, if adopted, and under other Federal, State, and local regulations). The "with critical habitat" scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, "METHODOLOGY," of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for *Chromolaena frustrata* over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributable to listing.

The DEA provides estimated costs of the probable economic impacts of the proposed critical habitat designation of *Chromolaena frustrata* associated with the following categories of activity: Commercial, residential and recreational development; Federal land management; and restoration and conservation.

The DEA estimates that approximately $578,000 in direct incremental costs would result from the critical habitat designation over the next 20 years (at a 7 percent discount rate). The DEA estimates 93 percent of the costs would be attributable to consultations regarding Federal land management and restoration and conservation activities, with the remaining 7 percent attributable to development in the area. Over half of the estimated incremental costs are expected to result from actions occurring with the Key Largo unit, in Monroe County, Florida.

Overall, 92 percent of the area proposed as critical habitat is located within Federal, State, or local conservation areas. The DEA estimates that the administrative cost of consultations for Federal land management to be $61,474 for formal consultations and $1,138 for informal consultations. It estimates that the incremental costs of the proposed critical habitat designation on Federal land management would be approximately $299,000 over the next 20 years (7 percent discount rate). Over half of these costs are expected to occur within the Everglades National Park unit.

The DEA estimates the administrative cost of consultations for commercial, residential, and recreational development to be $5,387 per formal consultation and $2,412 per informal consultation. It is estimated that the incremental costs of the proposed critical habitat designation on commercial, residential, and recreational development would be approximately $39,000 over the next 20 years (7 percent discount rate). The DEA provides an estimate that consultations in the Key Largo unit would account for 77 percent of these costs.

The DEA estimates the administrative cost of consultations for restoration and conservation to be $22,437 for formal consultations and $7,492 for informal consultations. It is estimated that the incremental costs of the proposed critical habitat designation on restoration and conservation projects to be approximately $240,000 over the next 20 years (7 percent discount rate). The majority, 91 percent, of these costs are estimated to occur within the Key Largo unit. Given the presence of other listed species that may trigger consultation requirements related to restoration and conservation projects, these costs for *C. frustrata* are likely overestimates of the incremental cost of the proposed critical habitat designation on restoration and conservation projects.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our October 11, 2012, proposed rule (77 FR 61836), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy Supply, Distribution, or Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental

Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for *Chromolaena frustrata* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as commercial, residential, and recreational development; Federal land management; and restoration and conservation. In order to determine whether it is appropriate for our agency to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where a listed species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for *Chromolaena frustrata*. Based upon the results of the DEA, we do not anticipate significant adverse impacts to small entities as a result of the proposed critical habitat designation. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the South Florida Ecological Services Office, Region 4, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 20, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–16239 Filed 7–5–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0025; 4500030113]

RIN 1018–AZ43

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Acuña Cactus and the Fickeisen Plains Cactus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revisions and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the October 3, 2012, proposed listing and designation of critical habitat for *Echinomastus erectocentrus* var. *acunensis* (acuña cactus) and *Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus) under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to allow all interested parties an opportunity to comment on revisions to the proposed critical habitat designations, which are described in this document; the associated draft economic analysis (DEA) for the proposed critical habitat designations; and the amended required determinations. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before July 23, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the October 3, 2012, proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0061 or by mail from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Search for Docket No. FWS–R2–ES–2013–0025, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0025; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021; telephone (602) 242–0210; facsimile (602) 242–2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We are reopening the comment period for our proposed critical habitat designations for the acuña cactus and the Fickeisen plains cactus that published in the **Federal Register** on October 3, 2012 (77 FR 60509). We are specifically seeking comments on the revised proposed critical habitat designations described in this document; see **ADDRESSES** for information on how to submit your comments. We will consider information and recommendations from all interested parties. We also seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the acuña cactus or the Fickeisen plains cactus;

(b) The amount and distribution of acuña cactus or the Fickeisen plains cactus habitat;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including management for the potential effects of climate change; and

(d) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(6) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(8) Information that may inform our consideration of exclusion, including benefits of exclusion and benefits of including the areas proposed as critical habitat for the Fickeisen plains cactus on the Navajo Nation based on the "Navajo Nation Fickeisen Plains Cactus Management Plan" and on the Babbitt Ranches based on their "Draft Babbitt Ranches Fickeisen Plains Cactus Management Plan." Both plans were submitted during the March 28 through April 29, 2013, comment period (78 FR 18938) and are available on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0025.

If you submitted comments or information on the proposed rule (77 FR 60509) during the initial comment period from October 3 to December 3, 2012, or during the second comment period (78 FR 18938) from March 28 to April 29, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them

in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during this and the prior two comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0025, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2013–0025, or by mail from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the acuña cactus and the Fickeisen plains cactus in this document. For more information on previous Federal actions concerning the acuña cactus and the Fickeisen plains cactus, refer to the proposed listing determination and designation of critical habitat published in the **Federal Register** on October 3, 2012 (77 FR 60509) or the draft economic analysis, which are available online at *http://www.regulations.gov* (at Docket Number FWS–R2–ES–2013–0025) or from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On October 3, 2012, we published a proposed rule to list the acuña cactus and the Fickeisen plains cactus as endangered and to designate critical habitat for both plants (77 FR 60509). For the acuña cactus, we proposed to designate as critical habitat approximately 21,740 hectares (ha) (53,720 acres (ac)) in six units located in Maricopa, Pima, and Pinal Counties, Arizona. For the Fickeisen plains cactus, we proposed to designate as critical habitat approximately 19,901 ha (49,186 ac) in nine units located in Coconino and Mohave Counties, Arizona. That proposal had a 60-day comment period, ending December 3, 2012. On March 28, 2013, we reopened the comment period for 30 days to announce the availability of the DEA (78 FR 18938). We will submit for publication in the **Federal Register** final listing and critical habitat designations for the acuña cactus and the Fickeisen plains cactus on or before October 3, 2013.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed critical habitat designation is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Revised Proposed Critical Habitat

Based on information we received during the comment periods, we are revising our proposed critical habitat for both cacti species (see the *Criteria Used to Identify Critical Habitat* section of the October 3, 2012, proposed rule (77 FR 60509)). The new information resulted in revisions to most of the acuña cactus critical habitat units. For the Fickeisen plains cactus, we are proposing to remove Unit 4, Snake Gulch, and add a new unit on U.S. Forest Service land. For the acuña cactus, we propose to designate approximately 7,657 ha (18,921 ac) as critical habitat in Maricopa, Pima, and Pinal Counties, Arizona. For the Fickeisen plains cactus, we propose to designate approximately 19,066 ha (47,123 ac) as critical habitat in Coconino and Mohave Counties, Arizona. Therefore, acuña cactus proposed critical habitat is reduced by 14,184 ha (34,799 ac), and Fickeisen plains cactus proposed critical habitat is reduced by 835 ha (2,063 ac).

Criteria Used To Identify Critical Habitat

In our October 3, 2012 (77 FR 60509), proposed rule, we identified additional areas, not occupied at the time of listing, as essential for the conservation of the acuña cactus. These areas were delineated using monitoring records from Organ Pipe Cactus National Monument (OPCNM) and GIS precipitation data. We noted that flowering and recruitment peaked in 1992, coinciding with a very wet winter with recorded precipitation of 29.7 cm (11.66 in). We intended to delineate areas that were projected to have 29.7 cm (11.66 in) or higher winter precipitation based on the past 30-year average. However, we mistakenly based our delineations on annual precipitation, not winter precipitation. We reevaluated our model, and there are no areas that meet the 29.7-cm (11.66-in) winter rainfall criterion. In summary, we acknowledge that long-term drought is a threat to acuña cactus; however, we do not have any additional information that allows us to delineate areas outside of those currently occupied that would be essential for the conservation of the species.

Acuña cactus

Unit 1—Organ Pipe Cactus National Monument

The Dripping Spring Subunit (1,591 ha (3,931 ac)) was originally proposed based on an acuña cactus herbarium specimen collected in 1952, which noted the collection location as south of Dripping Spring within 3 m (10 ft) of the U.S.-Mexico border; the exact location was not provided. Although OPCNM staff were unaware of this herbarium collection, they stated in their comments they had visited the general area of the collection while doing surveys for sensitive cultural and natural resources, as well as for buffelgrass, and no acuña cactus plants

were noted. Although it is likely this was once a population supporting enough individuals to warrant collection for herbaria, it now seems likely this population no longer exists at this location; therefore we consider this unit to be unoccupied. We also reevaluated the habitat to consider whether or not this unoccupied area is essential for the conservation of the species. In the October 3, 2012, proposed rule, we outlined criteria for designation of critical habitat, and we determined that unoccupied areas with suitable acuña cactus habitat and that receive higher mean winter precipitation were necessary for the conservation of the species. As the Dripping Spring Subunit does not receive this amount (29.7 cm (11.66 in)) of winter rainfall, it does not meet the definition of critical habitat for the species, and we are no longer proposing it as critical habitat for the acuña cactus. We have removed this subunit from our proposed designation. The revised proposed Unit 1 contains 2,416 ha (5,971 ac).

All Units Containing Unoccupied Acuña Cactus Habitat

In our proposed critical habitat rule, we proposed to designate unoccupied critical habitat for acuña cactus in areas receiving higher winter rainfall, thus allowing space for growth and expansion of the species in the face of ongoing drought and climate change model predictions. However, we received public comments regarding the data we used to identify the unoccupied critical habitat areas. In reviewing the information, we acknowledge that we incorrectly used annual rainfall data rather than winter rainfall data in our evaluation (see Criteria Used to Identify Critical Habitat above). As a result, we reevaluated the data and determined that no areas in southern Arizona meet rainfall criteria established in the proposed rule. Therefore, we are removing all the unoccupied critical habitat proposed in our October 3, 2012, proposed rule. Consequently, we are removing the entire Cimarron Mountain Subunit (2,100 ha (5,190 ac)) from our proposed designation. All of these lands are on the Tohono O'odham Nation. Within proposed Unit 4, the entire Sand Tank Mountain Subunit (3,107 ha (7,677 ac)) of Federal lands is removed. The amount of land removed within the Javelina Mountain Subunit of the Sand Tank Mountains Unit is 362 ha (895 ac), leaving 549 ha (1,355 ac) on Bureau of Land Management (BLM) lands within the Sonoran Desert National Monument. The amount of land removed within proposed Unit 5, Mineral Mountain, is 304 ha (752 ac) of BLM land, leaving 787 ha (1,945 ac) on BLM, Bureau of Reclamation (BOR), and State lands. Within proposed Unit 6, Box O Wash, we are removing 6,240 ha (15,419 ac) of land, leaving 1,981 ha (4,895 ac) split between two subunits, A and B; this land is distributed among Federal, State, and private landowners.

TABLE 1—ACUÑA CACTUS PROPOSED CRITICAL HABITAT AND REVISED PROPOSED CRITICAL HABITAT

Unit	Proposed critical habitat ha (ac)	Revised proposed critical habitat ha (ac)	Difference ha (ac)
Unit 1	4,007 (9,902)	2,416 (5,971)	1,591 (3,931)
Unit 2	666 (1,645)	666 (1,645)	0 (0)
Unit 3	3,737 (9,234)	1,258 (3,109)*	2,579 (6,373)
Unit 4	4,018 (9,928)	549 (1,355)	3,469 (8,572)
Unit 5	1,092 (2,697)	787 (1,945)	305 (752)
Unit 6	8,221 (20,314)	1,981 (4,895)	6,240 (15,419)
Totals	21,741 (53,720)	7,657 (18,921)	14,084 (34,799)

* See Exemptions for Acuña Cactus section below.

Revised Proposed Unit Descriptions for Acuña Cactus

Below we present unit descriptions for those units for which we are revising proposed critical habitat for acuña cactus.

TABLE 2—REVISED AREA OF PROPOSED CRITICAL HABITAT FOR THE ACUÑA CACTUS

Unit or subunit	Federal		State		Tribal		Private		Total	Total
	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac
Unit 1—Organ Pipe Cactus National Monument	2,416	5,971	0	0	0	0	0	0	2,416	5,971
Unit 3—Sauceda Mountains	1,102	2,724	0	0	156	385	0	0	1,258	3,109
Unit 4—Sand Tank Mountains	549	1,355	0	0	0	0	0	0	549	1,355
Unit 5—Mineral Mountain	570	1,408	217	537	0	0	0	0	787	1,945
Unit 6a—Box O Wash A Subunit	4	9	1,348	3,332	0	0	369	913	1,721	4,253
Unit 6b—Box O Wash B Subunit	0	0	158	391	0	0	102	251	260	642
Grand Total	4,640	11,466	1,723	4,260	156	385	471	1,164	6,991	17,276

Note: Area sizes may not sum due to rounding.

Unit 1: Organ Pipe Cactus National Monument

Proposed Unit 1 consists of 2,416 ha (5,971 ac) within OPCNM in southwestern Pima County, Arizona. The unit is on federally owned land administered by the National Park Service. Land within this unit is occupied at the time of listing with the largest known population of the acuña cactus, approximately 2,000 individuals. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Grazing and mining are not permitted within OPCNM; however, off-road, border-related activities do occur in OPCNM. Special management considerations or protection may be required to address off-road, border-related human disturbances; invasive plant removal; and insect predation in acuña cactus habitat.

Unit 3: Sauceda Mountains

Proposed Unit 3 is located in the Sauceda Mountains of northwestern Pima and southwestern Maricopa Counties, Arizona. This unit contains 1,102 ha (2,724 ac) of federally owned land and 156 ha (385 ac) of tribally owned land. The Federal land is administered by the BLM; the Tribal land is administered by the Tohono O'odham Nation. This unit is comprised of four separate populations, which are close enough in proximity as to be combined within the 900-m (2,953-ft) radius defined for pollinators. Lands within this unit are occupied at the time of listing; the combined number of plants occurring within this unit is 212. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

The features essential to the conservation of the species within the unit are threatened by mining; grazing; and off-road, border-related activities. Special management considerations or protection may be required within the unit to minimize habitat fragmentation; to minimize disturbance to individual acuña cactus individuals, soil, and associated native vegetation; and to prevent or remove invasive, exotic plants within acuña cactus habitat.

Unit 4: Sand Tank Mountains

Proposed Unit 4 consists of 549 ha (1,355 ac) within the Sonoran Desert National Monument of southwestern Maricopa County, Arizona. The unit is on federally owned land administered by the BLM. Land within this unit is occupied at the time of listing; the combined number of plants occurring within this unit is 200, occurring in three separate populations. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Grazing and mining are not permitted within the Sonoran Desert National Monument; however, off-road, border-related activities and trespass livestock grazing may occur in this unit. Special management considerations or protection may be required within this unit to address increased off-road, border-related human disturbances; to minimize disturbance to acuña cactus individuals, the soil, and associated native vegetation; and to prevent or remove invasive, exotic plants within acuña cactus habitat.

Unit 5: Mineral Mountain

Proposed Unit 5 consists of 787 ha (1,945 ac) on Mineral Mountain of north-central Pinal County, Arizona. This unit contains 570 ha (1,408 ac) of federally owned land and 217 ha (537 ac) of State-owned land. The Federal land is administered by the BLM (569 ha (1,406 ac)) and the Bureau of Reclamation (1 ha (2 ac)).

This unit contains five separate known populations totaling at least 30 individuals on lands administered by the BLM and the State of Arizona. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Livestock grazing and off-road vehicle activity occur on this unit, and mining occurs nearby. Special management considerations or protection may be required within the unit to minimize habitat fragmentation; to minimize disturbance to acuña cactus individuals, soil, and associated native vegetation; and to prevent or remove invasive, exotic plants within acuña cactus habitat.

Unit 6: Box O Wash

Proposed Unit 6 is located near Box O Wash of north-central Pinal County, Arizona. This unit consists of two subunits totaling 1,981 ha (4,895 ac). This unit contains 4 ha (9 ac) of federally owned land, 1,506 ha (3,722 ac) of State-owned land, and 471 ha (1,164 ac) of privately owned land. The Federal land is administered by the BLM.

Subunit 6a: Box O Wash A—Subunit 6a consists of 3.7 ha (9.1 ac) of BLM land, 369 ha (913 ac) of private land, and 1,348 ha (3,332 ac) of State land east of Florence, Arizona. This subunit is comprised of two separate populations of the acuña cactus on private and State-owned lands, which are close enough in proximity to be combined within the 900-m (2,953-ft) radius defined for pollinators. Lands within this subunit are occupied at the time of listing; the combined number of plants occurring within this subunit is 11. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Subunit 6b: Box O Wash B—Subunit 6b consists of 158 ha (391 ac) of State-owned land and 102 ha (251 ac) of private land east of Florence, Arizona. This subunit is comprised of one population of the acuña cactus on State-owned land; the 900-m (2,953-ft) radius defined for pollinators overlaps into private land. This area was surveyed in 2008, and 32 living acuña cacti were found. A 2011 survey resulted in no living plants located; however this was not a thorough survey. Therefore, we consider lands within this subunit occupied at the time of listing. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Livestock grazing and off-road vehicle activity occur in both subunits of proposed Unit 6, and mining occurs nearby. Special management considerations or protection may be required within both subunits of this unit to minimize habitat fragmentation; to minimize disturbance to acuña cactus individuals, soil, and associated native vegetation; and to prevent or remove invasive, exotic plants within acuña cactus habitat.

Exemptions for Acuña Cactus

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented

to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the critical habitat designation for acuña cactus to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are Department of Defense lands with completed, Service-approved INRMPs within the revised proposed critical habitat designation.

Approved INRMPs

Barry M. Goldwater Gunnery Range (BMGR)—Arizona

The BMGR has an approved INRMP. The U.S. Air Force is committed to working closely with the Service to continually refine the existing INRMP as part of the Sikes Act's INRMP review process. Based on our review of the INRMP for this military installation, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the portion of the acuña cactus habitat within this installation, identified as meeting the definition of critical habitat, is subject to the INRMP, and that conservation efforts identified in this INRMP will provide a benefit to the acuña cactus. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act. We are not including 379 ha (935 ac) of habitat on BMGR within the Coffeepot Mountain Subunit in this revised critical habitat designation because of this exemption. This leaves 1,258 ha (3,109 ac) in the Coffeepot Mountain Subunit on Bureau of Land Management and Tohono O'odham Nation lands as proposed critical habitat for the acuña cactus.

The BMGR completed a revision to the INRMP in relation to ongoing and planned conservation efforts for the acuña cactus and provided this revision to us during a public comment period. The benefits for acuña cactus from this revised INRMP include: Avoid disturbance of vegetation and pollinators within 900 meters of known acuña cactus plants; develop and implement procedures to control trespass livestock; monitor illegal immigration, contraband trafficking, and border-related enforcement; and continue to monitor and control invasive plant species to maintain quality habitat and prevent unnatural fire. Further, BMGR's environmental staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including acuña cacti and their habitat. In addition, BMGR's INRMP provides protection to acuña cactus habitat by prohibiting both mining and agriculture on their lands. BMGR's INRMP specifies periodic monitoring of the distribution and abundance of acuña cacti populations on the range.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2007 INRMP for BMGR and the revised acuña cactus portion of this INRMP developed in 2012 provide a benefit to the acuña cactus and its habitat. Therefore, lands subject to the INRMP for BMGR, which includes the lands leased from the Department of Defense by other parties, are exempt from critical habitat designation under section 4(a)(3) of the Act, and we are not including approximately 379 ha (935 ac) of habitat in this revised proposed critical habitat designation.

Fickeisen Plains Cactus

We are revising two areas of proposed Fickeisen plains cactus critical habitat: (1) We are removing Unit 4, Snake Gulch Unit, from proposed critical habitat; and (2) we are proposing an additional area as critical habitat on the Kaibab National Forest. We also announce additional areas being considered for exclusion from the final designation of Fickeisen plains cactus critical habitat (see Public Comments section above).

On October 3, 2012, we proposed approximately 945 ha (2,335 ac) as critical habitat within the Snake Gulch Unit on Federal land (77 FR 60509, p. 60560). The Snake Gulch Unit is located near the western boundary of the Kaibab National Forest on the North Kaibab Ranger District. It includes one of two known occurrences of the Fickeisen plains cactus on the Kaibab National Forest. Plants were observed in the 1980s in the area near Willow Point in the vicinity of Snake Gulch (Heritage Data Management System 2012). After this date, no other site visits had occurred to verify the location and status of the plant. During the public comment periods, the Kaibab National Forest conducted surveys near Willow Point and within the proposed designated critical habitat, but no plants were found (Hannemann 2013, p. 1; Hannemann 2013, pers. comm.). Further, the Kaibab National Forest had previously conducted surveys in the Snake Gulch area in 2002 and 2003, for a section 7 consultation, and those efforts failed to locate plants (USFS 2004, p. 601). Further investigation of the source of the 1980s information revealed that the observed occurrence of the Fickeisen plains cactus in the Snake Gulch vicinity was in error. Based on this finding and with three negative survey results, we consider the area at Snake Gulch to be unoccupied by the Fickeisen plains cactus. We are removing the 945-ha (2,335-ac) Snake Gulch Unit from our proposed critical habitat designation. We also reevaluated the habitat to consider whether unoccupied areas are essential for the conservation of the species. In the October 3, 2012, proposed rule, we determined that within the range of the Fickeisen plains cactus there are adequate amounts of area occupied by the plant to provide for and ensure the conservation of the species. We have determined that, even without the habitat previously considered occupied at the Snake Gulch Unit, there are adequate amounts of area occupied by the plant proposed as critical habitat to provide for and ensure the conservation of the species without the designation of any unoccupied areas as critical habitat. Therefore, we are not proposing any unoccupied areas as critical habitat for the Fickeisen plains cactus.

We also received new information on the available habitat at South Canyon that is located on the eastern boundary of the Kaibab National Forest near the Colorado River. This site is different from Subunit 5d (South Canyon) (in Unit 5, House Rock Valley) that is on

BLM lands. This area was known to be occupied by the plant based on its discovery in 2004 (Phillips 2013, pers. comm.); however, the location and number of plants had not been recorded. The Kaibab National Forest surveyed the area in late March 2013, and documented 62 individuals (Hannemann 2013, pers. comm.). We are proposing to designate this area (South Canyon Unit) as critical habitat along the rim of South Canyon. This area would constitute an addition of 110 ha (272 ac) to proposed critical habitat for the Fickeisen plains cactus.

Revised Proposed Unit Descriptions for Fickeisen Plains Cactus

Unit 4: South Canyon

Proposed Unit 4 is located on the eastern boundary of the North Kaibab Ranger District of the Kaibab National Forest in Coconino County. It is bounded by the Colorado River near Marble Canyon at House Rock Valley. It includes land originally designated as the Grand Canyon National Game Preserve that is now referred to as the Buffalo Ranch Management Area. It contains 110 ha (272 ac) of federally owned land that is administered by the Kaibab National Forest.

This unit contains at least 62 individuals scattered among six areas along the rim of South Canyon Point. It contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus.

The primary land uses within proposed Unit 4 include big game hunting and recreational activities throughout the year. The area is very remote and may receive limited number of hikers, hunters, or campers. Under a memorandum of understanding, the Kaibab National Forest and the Arizona Game and Fish Department commit to managing the natural resources of this area, mainly big game species, to ensure that sensitive resources are not impacted and desired conditions are achieved (USFS 2012, p. 92). Livestock grazing by cattle and mining activities are not authorized within the Buffalo Ranch Management Area. Special management considerations or protection may be required within the unit to minimize habitat disturbance to the soil and associated native vegetation, and prevent invasion of nonnative plants within Fickeisen plains cactus habitat.

Draft Economic Analysis

On March 28, 2013, we released the draft economic analysis of the proposed designations for the acuña cactus and the Fickeisen plains cactus and published a summary of the analysis in the **Federal Register** (78 FR 18938). For the acuña cactus, in this document, we are removing specific areas from the proposed designation of critical habitat for the acuña cactus. In the March 28, 2013, draft economic analysis, we estimated the total present value incremental impacts to be approximately $60,000 over 20 years following the designation of the acuña cactus critical habitat, assuming a 7 percent discount rate ($65,000 assuming a 3 percent discount rate). Since we are revising the proposed designation by removing areas and now exempting the Barry M. Goldwater Range from critical habitat, the total incremental impacts will be less than $60,000 over 20 years.

For the Fickeisen plains cactus, we are removing the Snake Gulch Unit and proposing the South Canyon Unit. In the March 28, 2013, draft economic analysis, we estimated the total present value incremental impacts to be approximately $39,000 over 20 years following the designation of the Fickeisen plains cactus critical habitat, assuming a 7 percent discount rate ($43,000 assuming a 3 percent discount rate). The draft economic analysis estimated the potential incremental costs of the Snake Gulch Unit to be approximately $7,000 over the next 20 years as a result of the consideration of adverse modification in section 7 consultations. With the addition of the South Canyon Unit, we estimate similar probable incremental administrative costs resulting from consideration of adverse modification in section 7 consultations. Therefore, we estimate the total present value incremental impacts to be approximately $39,000 over 20 years following the designation of the Fickeisen plains cactus critical habitat.

As stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the revisions to the proposed rule described in this document and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our March 28, 2013 (78 FR 18938), publication, we affirmed our compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. Because we have made changes to the proposed rules for both species, in this document, we reaffirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). We also affirm the statement in our March 28, 2013, publication (78 FR 18938) concerning the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Because we have made changes to the proposed critical habitat designations for both species, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may

revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the acuña cactus and the Fickeisen plains cactus would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as uranium mining, livestock grazing, and transportation construction and maintenance projects. In order to determine whether it is appropriate for our agency to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the acuña cactus or the Fickeisen plains cactus are present, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the consultation process.

In the draft economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the acuña cactus and the Fickeisen plains cactus. As a result of changes to the proposed critical habitat designation, more than 63 percent of land in the proposed designation for acuña cactus and less than 34 percent of the land in the proposed designation for Fickeisen plains cactus is federally owned. Anticipated incremental impacts in proposed critical habitat are primarily related to consultations on livestock grazing and other Federal land management activities. The remaining forecast impacts are anticipated to be conducted for transportation construction and maintenance projects, Partners for Fish and Wildlife programs, and activities on the Tohono O'odham or Navajo Nations' lands. The Arizona Department of Transportation (ADOT) and Tribes are not considered small entities. Therefore, of the remaining activities affected by the proposed critical habitat designations for the cacti, only one is expected to incur costs to small entities: uranium mining. One consultation is projected for the EZ uranium mine. This one consultation will result in impacts to Energy Fuels Inc. (operators of the EZ Mine) of approximately $900 on a present value basis, or approximately $80 on an annualized basis, which constitutes an impact of less than one-tenth of a percent of annual revenues. Of the activities affected by the proposed designation for the acuña cactus and the Fickeisen plains cactus, none is expected to incur incremental costs to third-party small entities. The forecast consultations either do not include third parties (programmatic consultations, intra-Service consultations, and consultations with another Federal agency) or the third parties are not considered small entities (consultations with the ADOT and the Tribes). Please refer to the Appendix A of the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated by the designation of critical habitat. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of the RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess cost and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the revised proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We conclude that future consultations are not likely to involve a third party or the third parties are not considered small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designations would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended on October 3, 2012, at 77 FR 60509, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.96(a) as follows:
■ a. In the entry proposed for "*Echinomastus erectocentrus* var. *acunensis* (acuña cactus)" at 77 FR 60509, by revising paragraphs (a)(5), (a)(6), (a)(7), (a)(9), and (a)(10); and
■ b. In the entry proposed for "*Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus)," at 77 FR 60509, by revising paragraphs (a)(5), (a)(9), (a)(10), and (a)(11).

The revisions read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

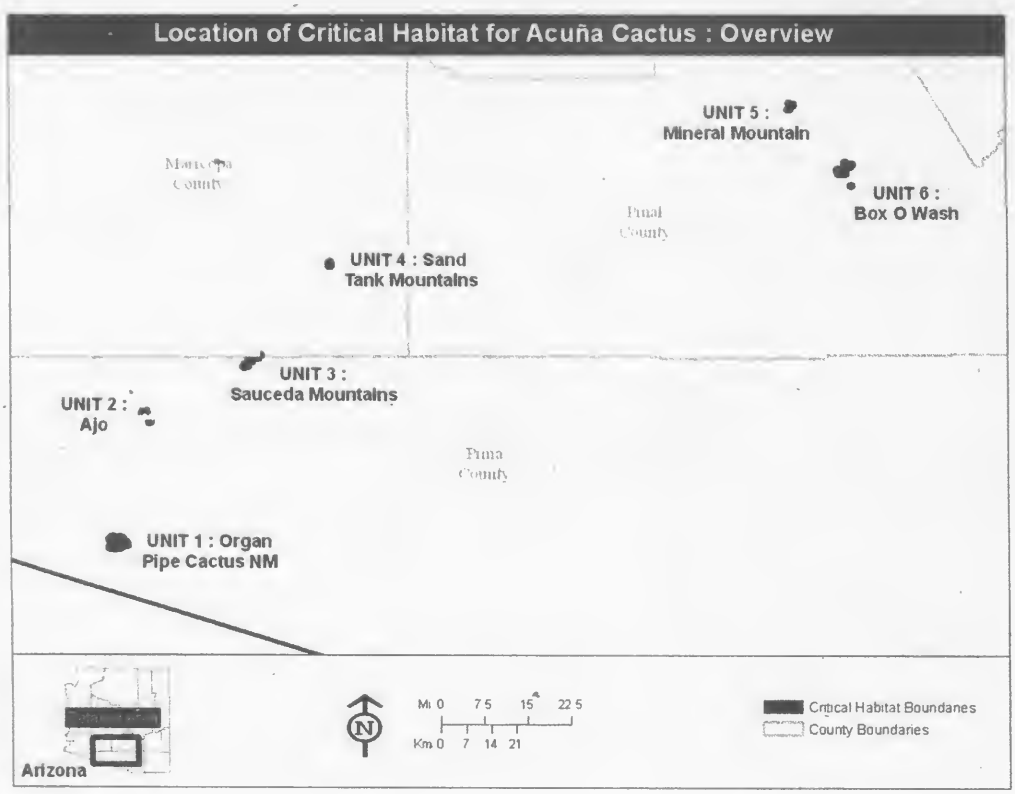
* * * * *

Family Cactaceae: *Echinomastus erectocentrus* var. *acunensis* (acuña cactus)

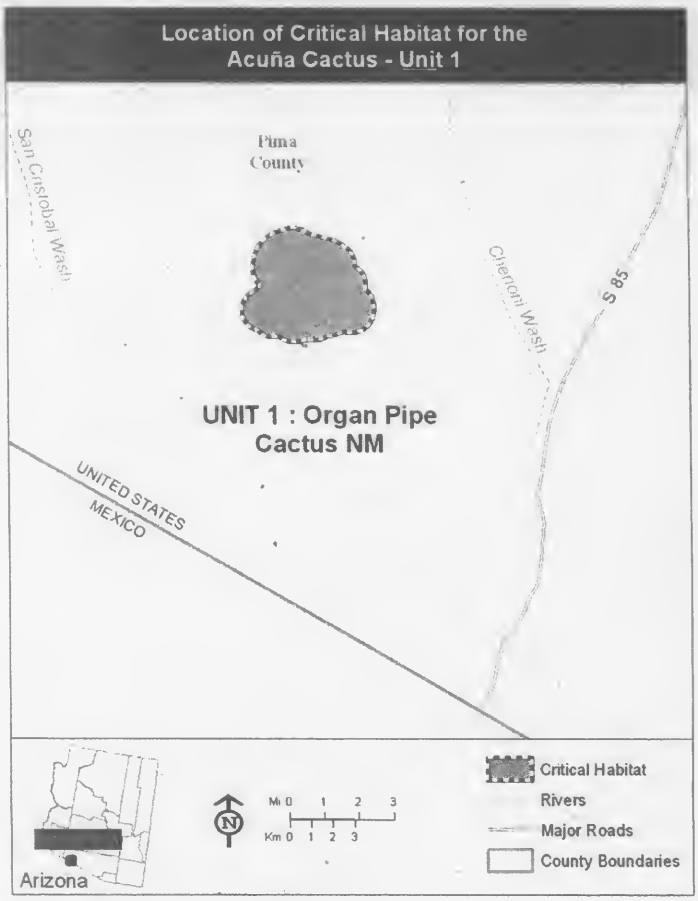
* * * * *

(5) Index map follows:

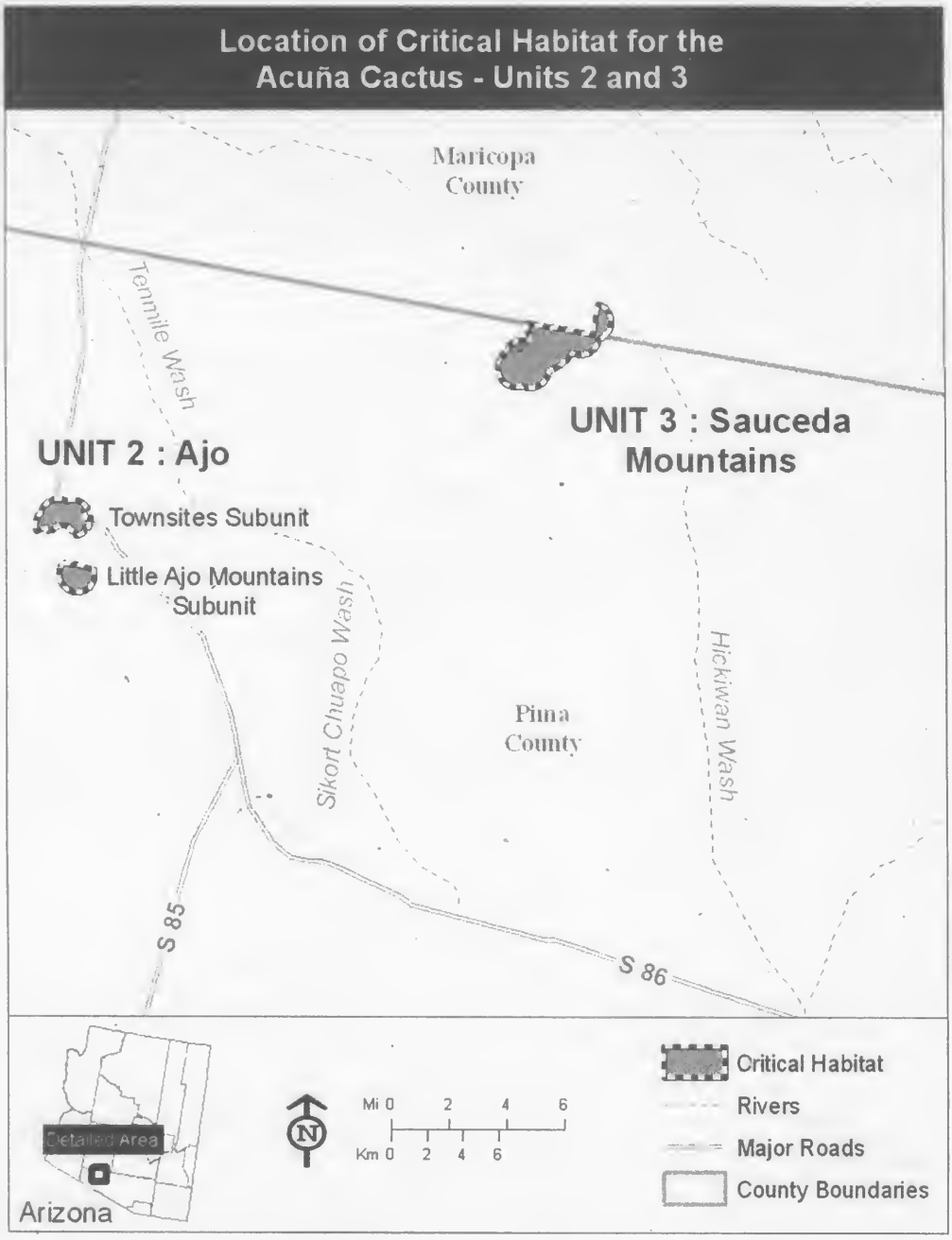
BILLING CODE 4310–55–P



(6) Unit 1: Organ Pipe Cactus National Monument, Pima County, AZ. Map of Unit 1 follows:



(7) Unit 2: Ajo, Pima County, AZ. Map of Units 2 and 3 follows:



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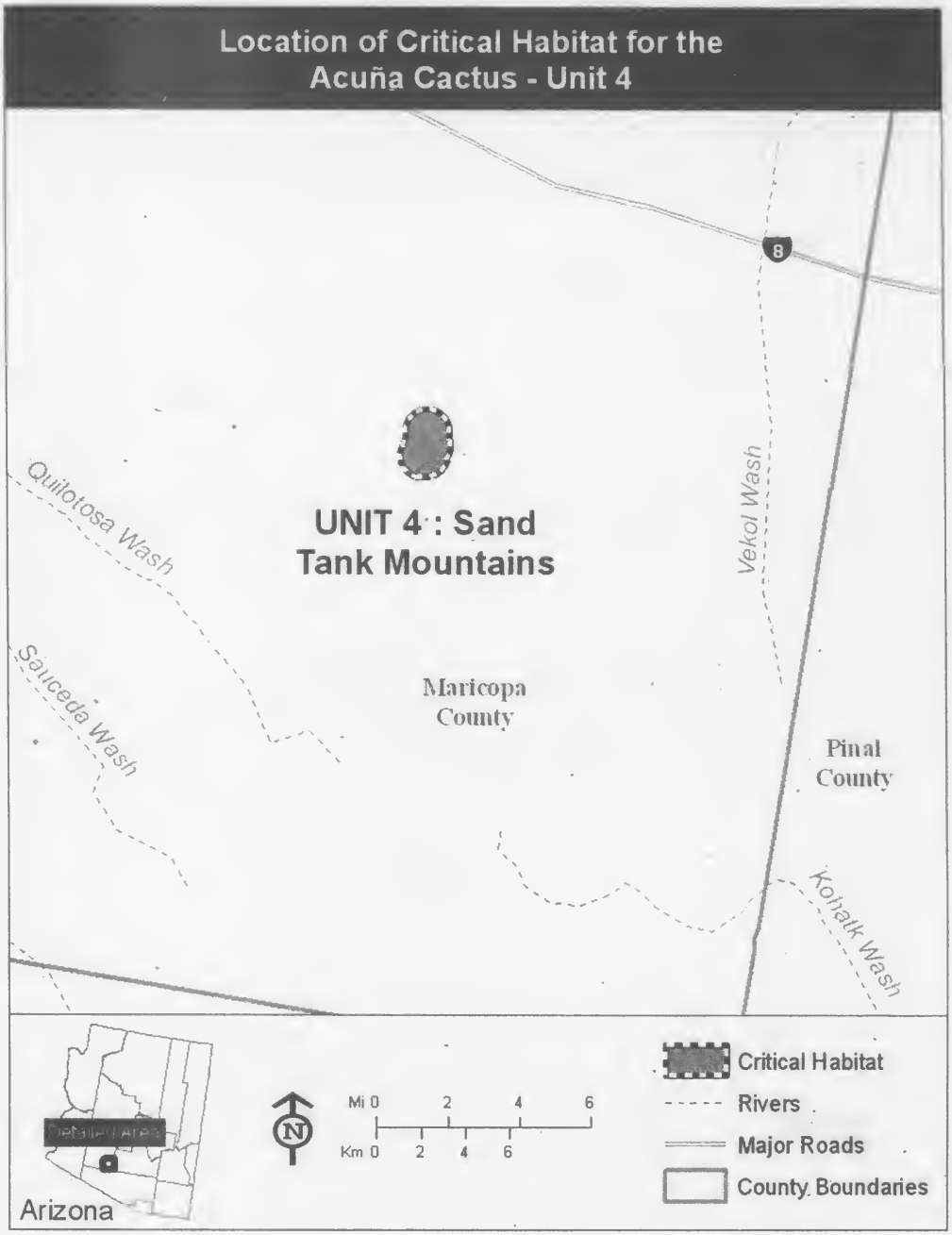
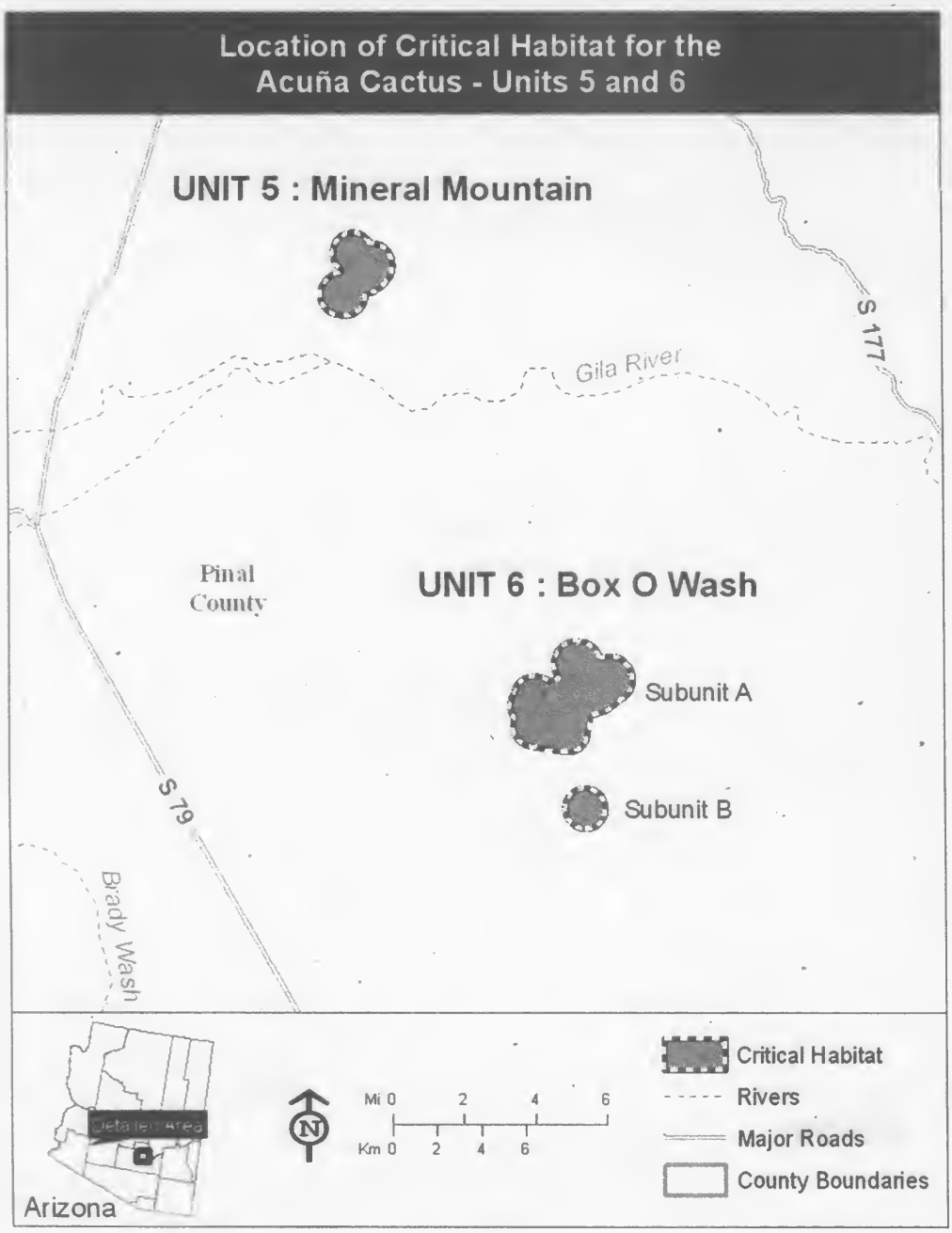
(9) Unit 4: Sand Tank Mountains, Maricopa County, AZ. Map of Unit 4 follows:



(10) Unit 5: Mineral Mountain, Pinal County, AZ. Map of Units 5 and 6 follows:

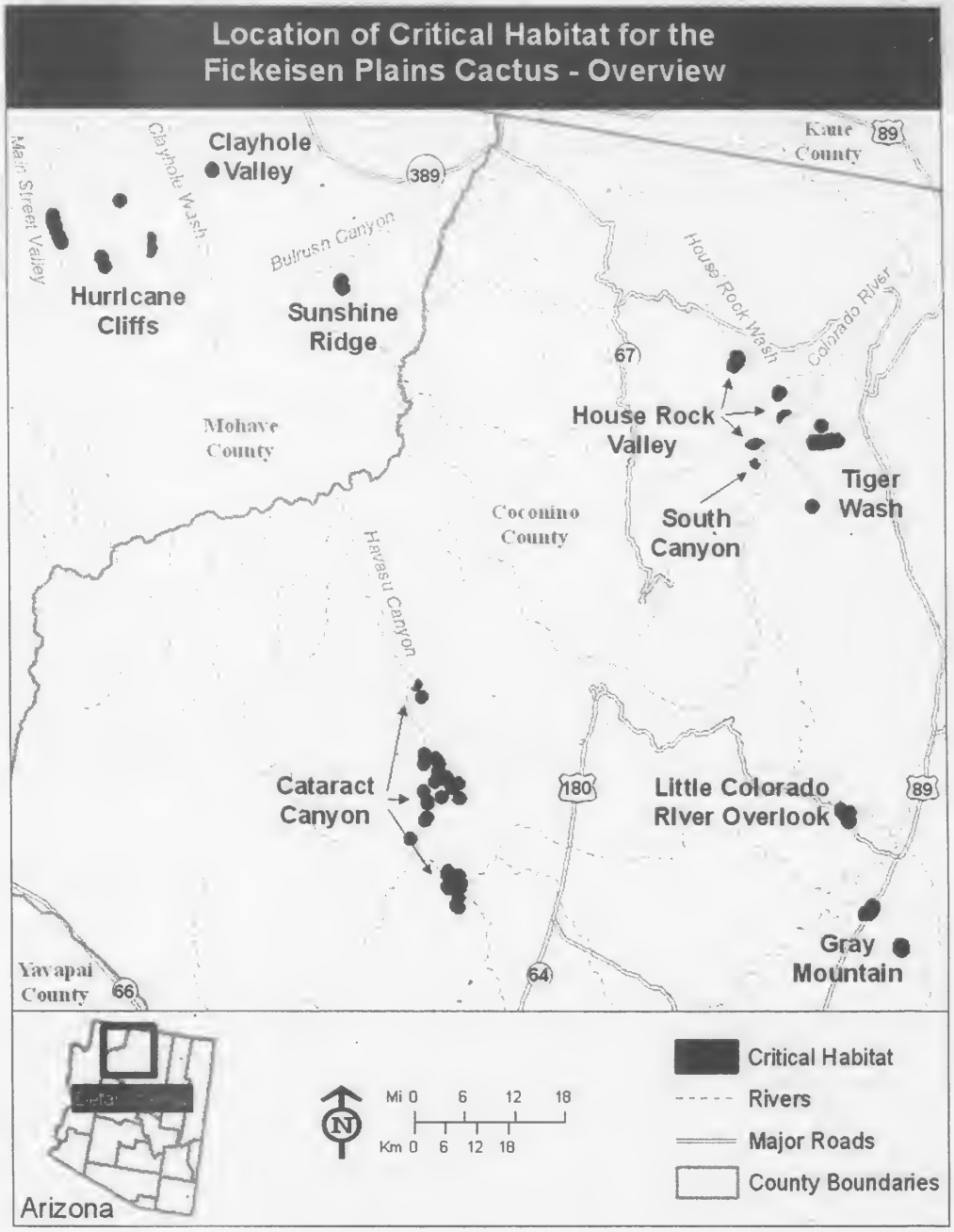


* * * * *

Family Cactaceae: *Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus)

* * * * *

(5) *Note:* Index map follows:



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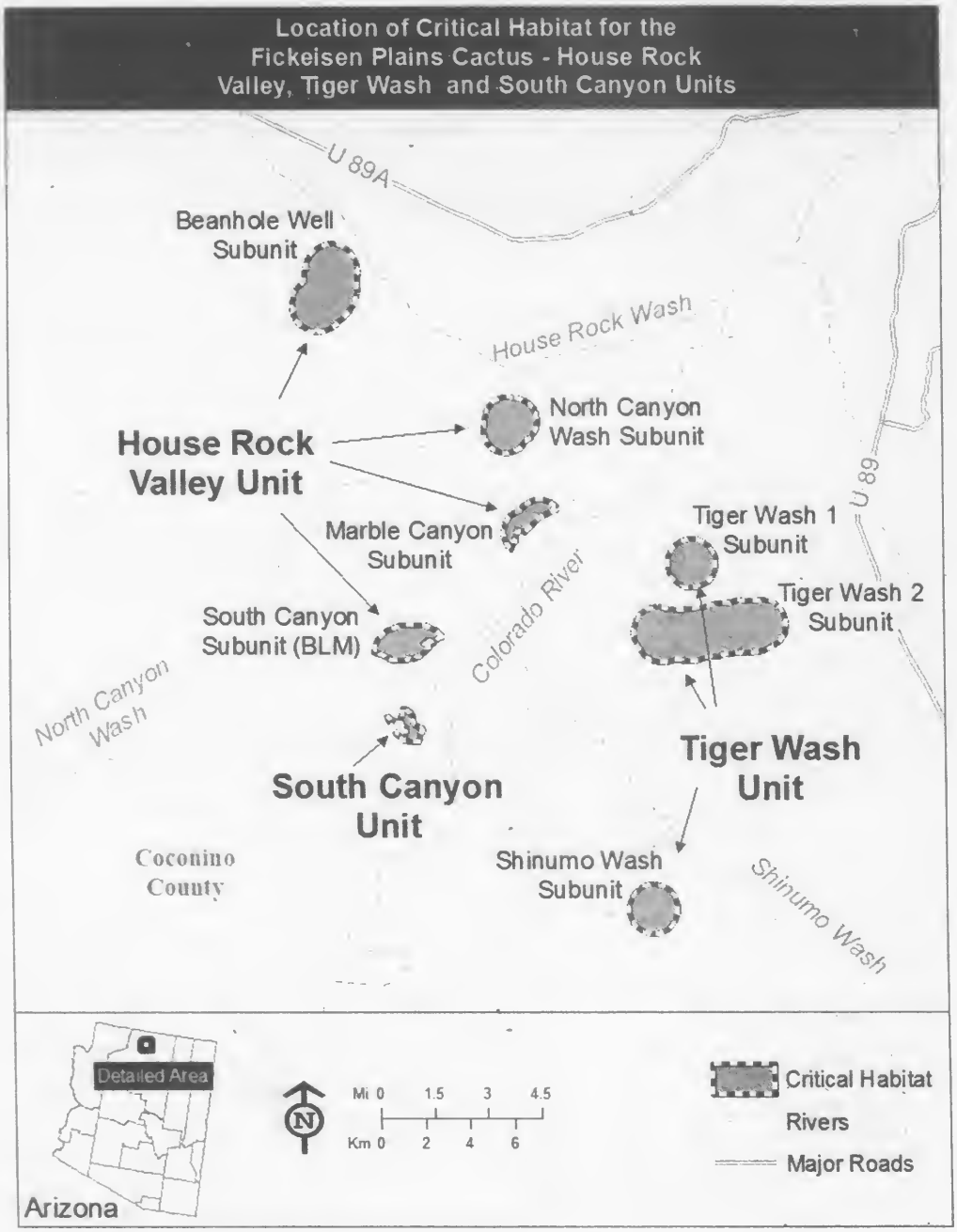
(9) Unit 4: South Canyon Unit, Coconino County, AZ. Map of Units 4, 5, and 6 follows:



(10) Unit 5: House Rock Valley Unit, Coconino County AZ. Map of Unit 5 is provided at paragraph (a)(9) of this entry.

(11) Unit 6: Tiger Wash Unit, Coconino County AZ. Map of Unit 6 is provided at paragraph (a)(9) of this entry.

* * * * *

Dated: June 26, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–16240 Filed 7–5–13; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 111014628–3329–01]

RIN 0648–BB54

Magnuson-Stevens Act Provisions; Implementation of the Shark Conservation Act of 2010; Extension of Comment Period

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: NMFS published a proposed rule on May 2, 2013, to implement provisions of the Shark Conservation Act of 2010 (SCA) that prohibit any person from removing any of the fins of a shark at sea, possessing shark fins on board a fishing vessel unless they are naturally attached to the corresponding carcass, transferring or receiving fins from one vessel to another at sea unless the fins are naturally attached to the corresponding carcass, landing shark fins unless they are naturally attached to the corresponding carcass, or landing shark carcasses without their fins naturally attached. NMFS proposes this action to amend existing regulations and make them consistent with the SCA. The public comment period for the proposed rule was previously extended, and ends on July 8, 2013. NMFS has decided to further extend the public comment period for 23 days, until July 31, 2013 to provide additional time for stakeholders and other members of the public to submit comments.

DATES: The public comment period for the proposed rule published at 78 FR 25685, May 2, 2013, is extended from July 8, 2013, until July 31, 2013. Comments must be received no later than July 31, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0092, 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 NOAA–NMFS–2012–0092 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.
- *Mail:* Submit written comments to Erin Wilkinson, National Marine Fisheries Service (SF3), NOAA; 1315 East-West Highway, Silver Spring, MD 20910.
- Fax 301–713–1193; *Attn:* Erin Wilkinson

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, etc.) 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 or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available on the Federal e-Rulemaking Portal *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Erin Wilkinson, 301–427–8561; *sca.rulemaking@noaa.gov*.

SUPPLEMENTARY INFORMATION: On May 2, 2013, NMFS published a proposed rule in the **Federal Register** (78 FR 25685) to implement provisions of the SCA that prohibit any person from removing any of the fins of a shark at sea, possessing shark fins on board a fishing vessel unless they are naturally attached to the corresponding carcass, transferring or receiving fins from one vessel to another at sea unless the fins are naturally attached to the corresponding carcass, landing shark fins unless they are naturally attached to the corresponding carcass, or landing shark carcasses without their fins naturally attached. NMFS proposes this action to amend existing regulations and make them consistent with the SCA.

Public Comment Extension

The public comment period for the proposed rule ends on July 8, 2013. NMFS is extending the public comment period for an additional 23 days until July 31, 2013. The extension of the comment period ensures that NMFS provides adequate time for stakeholders and members of the public to comment on the proposed rule to implement the provisions of the Shark Conservation Act of 2010.

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

Dated: July 2, 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.

[FR Doc. 2013–16298 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 130
Monday, July 8, 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

July 1, 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 or other forms of information technology.

Comments regarding this information collection received by August 7, 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. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Census of Aquaculture.

OMB Control Number: 0535–0237.

Summary of Collection: The primary objective of the 2013 Census of Aquaculture is to obtain a comprehensive and detailed picture of the aquaculture sector of the economy. Authority to administer the census of aquaculture is covered by Public Law 105–113, the Census of Agriculture Act of 1997, and U.S. Code Title 7. The census of aquaculture will be the only source of data comparable and consistent at the national and State levels. It will cover all operations, commercial or noncommercial, for which $1,000 or more of aquaculture products were sold or normally would have been sold during the census year. The census of aquaculture is one of a series of special study programs that comprise the follow-ons to the census of agriculture and is designed to provide more detailed statistics on the aquaculture industry.

Need and Use of the Information: The National Agricultural Statistics Service will collect data to provide a comprehensive inventory on the number of operations, freshwater and saltwater acreage used for aquaculture production, water sources used for production, methods of production, total production, sales outlets, value of aquaculture products sold and sales by aquaculture species, products distributed for recreation, restoration or conservation by species. These data will provide information on the aquaculture industry necessary for farmers, government and various groups, concerned with the aquaculture industry to evaluate policy and programs, make marketing decisions and determine the economic impact on the economy.

Description of Respondents: Farms.

Number of Respondents: 8,000.

Frequency of Responses: Reporting: One-time (Every 5-years).

Total Burden Hours: 6,008.

Charlene Parker,
Departmental Information Collection Clearance Officer.

[FR Doc. 2013–16206 Filed 7–5–13; 8:45 am]
BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0052]

Notice of Availability of a Pest Risk Analysis for the Importation of Swiss Chard From Colombia Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation of Swiss chard from Colombia into the continental United States. Based on that analysis, we have concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of Swiss chard from Colombia. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before September 6, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0052-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0052, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0052* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday

through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Wayson, Senior Regulatory Policy Specialist, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2036.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–58), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the Government of Colombia to allow the importation of Swiss chard (*Beta vulgaris* ssp. *cicla* (L.) Koch) into the United States. Currently, Swiss chard is not authorized for entry from Colombia. We completed a pest risk assessment (PRA) to identify pests of quarantine significance that could follow the pathway of importation if such imports were to be allowed. Based on the PRA, we then completed a risk management document (RMD) to identify phytosanitary measures that could be applied to mitigate the risks of introducing or disseminating the identified pests via the importation of Swiss chard from Colombia. We have concluded that Swiss chard can safely be imported into the continental United States from Colombia using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). These measures are that:

- Swiss chard may be imported into the continental United States in commercial consignments only;
- The Swiss chard is subject to inspection at the port of entry; and
- The Swiss chard must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Colombia with an additional declaration stating that the consignment was inspected and found free of *Copitarsia incommoda* and *Liriomyza huidobrensis*.

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our PRA and RMD for public review and comment. The PRA and RMD may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may also request paper copies of the PRA and RMD by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis that you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of Swiss chard from Colombia in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of Swiss chard from Colombia into the continental United States subject to the requirements specified in the RMD.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 1st day of July 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–16207 Filed 7–5–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Input From Stakeholders Regarding the New Water Challenge Area Within the Agriculture and Food Research Initiative

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice of web-based listening session and request for stakeholder input.

SUMMARY: As part of the National Institute of Food and Agriculture's (NIFA) strategy to successfully implement the Agriculture and Food Research Initiative (AFRI), NIFA intends to initiate a new challenge area within AFRI in Fiscal Year (FY) 2014 to address water issues. NIFA will be holding a web-based listening session in order to solicit stakeholder input on this new challenge area. It is open to the public and the focus of the listening session is to gather stakeholder input that will be used in developing the Request for Applications (RFA) in FY 2014. NIFA is particularly interested in input on how best to achieve the most impact, within budget constraints, in the early years of this new challenge area.

All comments must be received by close of business on July 30, 2013, to be considered in the initial drafting of the FY 2014 AFRI Water program RFA.

DATES: The web-based listening session will be held on Tuesday, July 16, 2013, from 1:00 p.m. to 3:00 p.m., Eastern Standard Time (EST). All written comments must be received by 5 p.m. EST on Tuesday, July 30, 2013.

ADDRESSES: The web-based listening session will be hosted using Adobe Connect. On July 16th, please access the following Web site, *http://nifa-connect.nifa.usda.gov/afri-water/*. In addition, audio conference call capabilities can be accessed at 1–888–858–2144, participant code 1512861#.

You may submit written comments, identified by NIFA–2013–0010, by any of the following methods:

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

Email: AFRI@nifa.usda.gov. Include NIFA–2013–0010 in the subject line of the message.

Fax: 202–401–1782.

Mail; Paper, disk or CD–ROM submissions should be submitted to AFRI; Institute of Food Production and Sustainability (IFPS), National Institute of Food and Agriculture, U.S. Department of Agriculture, STOP 2240, 1400 Independence Avenue SW., Washington, DC 20250–2220.

Hand Delivery/Courier: AFRI, IFPS, National Institute of Food and Agriculture, U.S. Department of Agriculture, Room 3444, Waterfront Centre, 800 9th Street SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name (NIFA) and reference to NIFA–2013–0010. All comments received will be posted to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Joya, (202) 401–1282 (phone), (202) 401–1782 (fax), or *tjoya@nifa.usda.gov*.

SUPPLEMENTARY INFORMATION:

Additional Web-based Listening Session and Comment Procedures—Persons wishing to present oral comments during the web-based listening session on Tuesday, July 16, 2013 are requested

to pre-register by contacting Ms. Terri Joya at (202) 401–1282, by fax at (202) 401–1782 or by email to *tjoya@nifa.usda.gov*. Participants may reserve one 5-minute comment period. More time may be available, depending on the number of people wishing to make a presentation. Reservations will be confirmed on a first-come, first-served basis. All other participants may provide comments during the web-based listening session if time permits, or submit written comments. All written comments must be received by close of business July 30, 2013, to be considered. All comments and the official transcript of the meeting, when they become available, may be reviewed on the NIFA Web page, *http://www.nifa.usda.gov/funding/afri/afri_listen_session.html* for six months. Additional AFRI Program-specific web-based listening sessions may occur after July 16, 2013 to obtain public comments for use in developing other AFRI RFAs. Dates and times will be posted to the following URL: *http://www.nifa.usda.gov/funding/afri/afri_faq_webinars.html*.

Background and Purpose

Significant variations from the historical rate of water supply and availability are projected to have major impacts on agricultural, forest, and range production systems. The new water program area within AFRI will be coordinated with, and leverage, efforts in other AFRI challenge areas, such as the Food Security, Food Safety, Climate Variability and Change and Sustainable Bioenergy challenge areas, and help solve critical water resource problems in rural and agricultural watersheds across the United States. The program will focus on developing solutions for water management that link food, water, climate change, energy, and environmental issues. Funding will be used to develop and transfer management practices, technologies, and tools for farmers, ranchers, forest owners and managers, and citizens to improve water resource quantity and quality. NIFA's approach will link social, economic, and behavioral sciences with traditional biophysical sciences and engineering to address watershed- or aquifer-scale problems. NIFA has tentatively identified three critical topics that warrant immediate, comprehensive, and coordinated efforts in research, education, and extension. These three topics are: (1) Ensuring agricultural water security, addressing surface water, groundwater and reclaimed water needed to produce a wide array of agricultural goods and services now and into the future; (2) Improving nutrient management in agricultural landscapes with focus on nitrogen and phosphorous; and (3) Reducing impacts of chemicals of emerging concern and the presence and movement of waterborne pathogens in the landscape. Information regarding the AFRI program can be found at *http://www.nifa.usda.gov/funding/afri/afri.html*. AFRI grants are authorized for FYs 2009–2013, of which the Secretary may retain no more than 4 percent for administrative costs. Grants will be awarded on the basis of merit, quality, and relevance and may have terms of up to 10 years. Subject to the availability of appropriations to carry out the research component of the AFRI program, the Secretary may award grants to State agricultural experiment stations; colleges and universities; university research foundations; other research institutions and organizations; Federal agencies; national laboratories; private organizations or corporations; individuals; or any group consisting of two or more of the aforementioned entities. The integrated component of the AFRI program, the Secretary may awards grants to colleges and universities; 1994 Land-Grant Institutions; and Hispanic-serving agricultural colleges and universities.

Implementation Plans

NIFA plans to consider stakeholder input received from this web-based listening session as well as other written comments in developing the FY 2014 solicitations for this program.

Done at Washington, DC, this 26th day of June, 2013.

Sonny Ramaswamy,

Director, National Institute of Food and Agriculture.

[FR Doc. 2013–16204 Filed 7–5–13; 8:45 am]

BILLING CODE 3410–22–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Revised Notice of Business Meeting.

DATE AND TIME: Friday, July 12, 2013; 9:30 a.m. EST

PLACE: 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC 20425

MEETING AGENDA

I. Approval of Agenda

II. Program Planning

- Approval of Final Draft of 2013 Statutory Enforcement Report
- Discussion re: Proposed Findings and Recommendations for the 2013 Statutory Enforcement Report
- Status Update on the Sex Trafficking: A Gender-Based Violation of Civil Rights Report
- Status Update on the Federal Civil Rights Engagement with Arab and Muslim American Communities Post 9/11 Report

III. Management and Operations

- Staff Director's report
- Acting Chief of Regional Programs' report

IV. Approval of State Advisory Committee Appointment Slates

- Kentucky
- Maine
- Minnesota
- New Hampshire
- New York

V. Adjourn Meeting

FOR FURTHER INFORMATION CONTACT PERSON: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: July 3, 2013.

TinaLouise Martin,

Director of Management/Human Resources.

[FR Doc. 2013–16454 Filed 7–3–13; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Information Collection; Comment Request; Direct Investment Surveys: BE–577, Quarterly Survey of U.S. Direct Investment Abroad: Transactions of U.S. Reporter With Foreign Affiliate

AGENCY: Bureau of Economic Analysis, 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 comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 6, 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 email 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 Sarahelen Thompson, Acting Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9660; fax: (202) 606–5318; or via email at *Sally.Thompson@bea.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate (Form BE–577), obtains quarterly data on transactions and positions between U.S.-owned foreign business enterprises and their U.S. parents. The survey is a sample survey that covers all foreign affiliates above a size-exemption level. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is conducted every five years. The data are used in the preparation of the U.S. international transactions accounts, the input-output accounts, the national income and product accounts, and the international investment position of the United States. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies.

No changes to the survey forms or reporting requirements are proposed.

II. Method of Collection

Survey forms are sent to potential respondents each quarter; responses are due within 30 days after the close of each fiscal quarter, except for the final quarter of the fiscal year, when reports should be filed within 45 days. A report must be filed for every foreign business enterprise whose voting stock (or the equivalent) is owned 10 percent or more by a U.S. business enterprise and for which any one of the following three items was greater than $60 million (positive or negative) at the end of, or for, the foreign business enterprise's fiscal year: (1) Total assets, (2) annual sales or gross operating revenues excluding sales taxes, or (3) net income after provision for foreign income taxes.

As an alternative to filing paper forms, BEA offers an electronic filing option, the eFile system, for use in reporting on Form BE–577. For more information about eFile, go to *www.bea.gov/efile*.

Potential respondents are those U.S. parents that reported owning foreign business enterprises in the 2009 benchmark survey of U.S. direct investment abroad, along with entities that subsequently entered the direct investment universe. The data collected are sample data. Universe estimates are developed from the reported sample data.

III. Data

OMB Control Number: 0608–0004.
Form Number: BE–577.
Type of Review: Regular submission.
Affected Public: Businesses or other for-profit organizations.
Estimated Number of Respondents: 1,900 U.S. parents filing for 15,000 foreign affiliates per quarter; 60,000 annually.
Estimated Time per Response: 1 hour is the average, but may vary considerably among respondents because of differences in company structure and complexity.
Estimated Total Annual Burden Hours: 60,000.
Estimated Total Annual Cost to Public: $0.
Respondent's Obligation: Mandatory.
Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108, as amended by P.L. 98–573 and Pub. L. 101–533).

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 will 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: July 2, 2013.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 2013–16265 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–72–2013]

Foreign-Trade Zone 18—San Jose, California; Application for Reorganization (Expansion of Service Area) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of San Jose, grantee of Foreign-Trade Zone 18, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on July 1, 2013.

FTZ 18 was approved by the Board on November 27, 1974 (Board Order 103, 39 FR 42031, 12/04/1974) and reorganized under the ASF on July 23, 2012 (Board Order 1842, 77 FR 45334, 07/31/2012). The zone project currently has a service area that includes all of San Jose, California.

The applicant is now requesting authority to expand the service area of the zone to include all of Santa Clara County, the cities of Santa Cruz and Scotts Valley in Santa Cruz County and the cities of Fremont, Hayward, Newark and Union in City in Alameda County, California, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The proposed expanded service area is adjacent to the San Jose U.S. Customs and Border Protection Ports of Entry.

In accordance with the FTZ Board's regulations, Christopher Kemp of the

FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is September 6, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 23, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: July 1, 2013.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2013–16350 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–106–2013]

Foreign-Trade Zone 92—Gulfport, Mississippi; Application for Subzone; Channel Control Merchants, LLC, Hattiesburg, Mississippi

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Mississippi Coast Foreign Trade Zone, Inc., grantee of FTZ 92, requesting subzone status for the facility of Channel Control Merchants, LLC, located in Hattiesburg, Mississippi. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on July 1, 2013.

The proposed subzone (17.28 acres) is located at 5154 State Highway 42 in Hattiesburg, Mississippi. (A portion of the proposed subzone is currently designated as a temporary site of FTZ 92 (Site 14, 4 acres) which will expire on October 31, 2013.) No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 92.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 19, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 3, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz*.

FOR FURTHER INFORMATION CONTACT: Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: July 1, 2013.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2013–16349 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–22–2013]

Foreign-Trade Zone 262—Southaven (Desoto County), Mississippi; Authorization of Production Activity; Milwaukee Electric Tool Corporation (Power and Hand Tools); Olive Branch, Greenwood, and Jackson, Mississippi

On February 28, 2013, Northern Mississippi FTZ, Inc., grantee of FTZ 262, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Milwaukee Electric Tool Corporation, in Olive Branch, Greenwood, and Jackson, Mississippi.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 17350, 3–21–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14, and further subject to a restriction requiring that all foreign inputs included in textile categories (classified within HTSUS 4202.92, 6101.20, 6101.30, 6201.93, 6201.99, 6202.93, 6202.99, 6216.00, 6217.10, and 6307.90) used in the production activity must be admitted to the zone in privileged foreign status (19 CFR 146.41) or domestic (duty-paid) status (19 CFR 146.43).

Dated: June 28, 2013.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2013–16351 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting an administrative review and two new shipper reviews (NSRs) of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC). The administrative review covers six exporters of the subject merchandise,[1] of which the Department selected one mandatory respondent for individual examination (*i.e.*, Changshan Peer Bearing Co. Ltd. (CPZ/SKF)). The NSRs cover Haining Automann Parts Co., Ltd. (Automann), and Zhejiang Zhengda Bearing Co., Ltd. (Zhengda). The period of review is June 1, 2011, through May 31, 2012.

We have preliminarily determined that certain respondents sold subject merchandise in the United States at prices below normal value (NV). If these preliminary results are adopted in the final results of these reviews, we will instruct U.S. Customs and Border

[1] This figure does not include two companies for which the Department has rescinded this administrative review. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review*, 78 FR 34985 (June 11, 2013).

Protection (CBP) to assess antidumping duties on all appropriate entries.

DATES: *Effective Date:* July 8, 2013.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Henry Almond, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the order includes tapered roller bearings. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.[2]

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). Constructed export and export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a nonmarket economy (NME) within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act. Specifically, the respondents' factors of production have been valued using surrogate values from Thailand, which is economically comparable to the PRC and a significant producer of comparable merchandise.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice.[3] The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

Regarding the administrative review, we preliminarily determine that the following weighted-average dumping margins exist for the period June 1, 2011, through May 31, 2012:

Exporter	Weighted-average dumping margin (percent)
Changshan Peer Bearing Co., Ltd.	0.63
Dana Heavy Axle S.A. de C. V.*	0.63
Zhejiang Sihe Machine Co., Ltd*	0.63
Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd.*	0.63
PRC-Wide Entity[4]	92.84

*This company applied for or demonstrated eligibility for a separate rate in this administrative review. The rate for this company is the calculated weighted-average dumping margin for CPZ/SKF. *See* the Preliminary Decision Memorandum.

Regarding the NSRs, we preliminarily determine that the following weighted-average dumping margins exist for the period June 1, 2011, through May 31, 2012:

Exporter	Producer	Weighted-average dumping margin (percent)
Haining Automann Parts Co., Ltd	Haining Automann Parts Co., Ltd	59.59
Zhejiang Zhengda Bearing Co., Ltd	Zhejiang Zhengda Bearing Co., Ltd	0.00

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[5] Rebuttals to case briefs may be filed no later than five days after the written comments are filed and all rebuttal comments must be limited to comments raised in the case briefs.[6]

Any interested party may request a hearing within 30 days of publication of this notice.[7] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.[8]

The Department will issue the final results of this administrative review and these NSRs, which will include the results of its analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

[2] *See Notice of Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China,* 52 FR 22667 (June 15, 1987), for a complete description of the scope of the order.

[3] *See* "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China" from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated July 1, 2013 (Preliminary Decision Memorandum), issued concurrently with and hereby adopted by this notice.

[4] The PRC-Wide Entity includes all entities for which the Department initiated a review but which did not establish their eligibility for a separate rate. *See* the Preliminary Decision Memorandum.

[5] *See* 19 CFR 351.309(c).

[6] *See* 19 CFR 351.309(d).

[7] *See* 19 CFR 351.310(c).

[8] *See* 19 CFR 351.310(d).

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1) (2012), if an interested party submits factual information less than ten days before or on the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.[9] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.[10]

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews.[11] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of these reviews.

For each individually examined respondent in these reviews (*i.e.*, CPZ/SKF, Automann, and Zhengda) which has a weighted-average dumping margin which is not zero or *de minimis* (*i.e.*, less than 0.5 percent), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). For the respondents which were not selected for individual examination in this administrative review and which qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margin assigned to each respondent in the final results of this administrative review. For the PRC-wide entity, the assessment rate will be equal to the weighted-average dumping margin assigned to it in the final results of this administrative review.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by these reviews. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above which have a separate rate, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, then a cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, 92.84 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter.

With respect to the NSRs, consistent with the Department's practice, the Department has established a combination cash deposit rate for Automann and Zhengda as follows: (1) For subject merchandise exported and produced by Automann or Zhengda, the cash deposit rate will be the rate established for each company in the final results of this review; (2) for subject merchandise exported by Automann or Zhengda but not produced by the same company, the cash deposit rate will be the rate for the PRC-wide entity, 92.84 percent; (3) for subject merchandise produced by Automann or Zhengda but not exported by the same company, the cash deposit rate will be the rate applicable to that exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of reviews in accordance with sections 751(a)(1), 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July 1, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2013–16344 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[10] *See* 19 CFR 351.301(c)(3).

[11] *See* 19 CFR 351.212(b).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Final Results of Expedited Third Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 1, 2013, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on persulfates from the People's Republic of China ("PRC"). On the basis of a notice of intent to participate, and an adequate substantive response filed on behalf of domestic interested parties, as well as a lack of response from any respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of the sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The magnitude of the dumping margins likely to prevail is identified in the Final Results of Review section of this notice.

DATES: *Effective Date:* July 8, 2013.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4162.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2013, the Department published the notice of initiation of the sunset review of the antidumping duty order on persulfates from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[1] On March 15, 2013, the Department received a notice of intent to participate from a domestic interested party, FMC Corporation ("FMC"), within the deadline specified in 19 CFR 315.218(d)(1)(i), and provided information required under 19 CFR 315.218(d)(1)(ii). FMC claimed interested party status under section 771(9)(C) of the Act as a domestic producer of persulfates in the United States and a petitioner in the original investigation. On April 1, 2013, the Department received a substantive response from FMC within the deadline specified in 19 CFR 351.218(d)(3)(i). We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department determined to conduct an expedited review of the order.

[1] *See Initiation of Five-Year ("Sunset") Review*, 76 FR 13862 (March 1, 2013).

Scope of the Order

The products covered by the order are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated July 1, 2013, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked.

Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit ("CRU"), Room 7046 of the main Department building, as well as electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). IA ACCESS is available to registered users at *http://iaacess.trade.gov* and in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the web at *http://www.trade.gov/ia/*. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to section 752(c)(3) of the Act, we determine that revocation of the antidumping duty order on persulfates from the PRC would be likely to lead to continuation or recurrence of dumping. Furthermore, we find that the magnitude of the margin of dumping that is likely to prevail if the order was revoked to be the following weighted-average percentage margins:

Exporters	Weighted-average margin (percent)
Sinochem Jiangsu Wuxi Import & Export Corporation	119.02
Shanghai Ai Jian Import & Export Corporation (Shanghai AJ)	119.02
Guangdong Petroleum Chemical Import and Export Trade	
(Guangdong Petroleum)	119.02
PRC-wide	119.02

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: July 1, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–16346 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination of Sales at Less Than Fair Value and Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 18, 2013, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) final results of remand redetermination in which it determined that critical circumstances did not exist during the less than fair value investigation pursuant to the CIT's remand order in *Zhejiang Native Produce & Animal By-Products Import & Export Corp.* v. *United States*, Court No. 02–00057, Slip Op. 11–110 (September 6, 2011).[1] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's *Notice of Final Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001) (*Final Determination*) and is amending its *Final Determination*.

DATES: *Effective Date:* July 8, 2013.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 7850, Washington, DC 20230; telephone (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2013, the Department issued the Remand Results. The Department provided an extensive background of this case in its previous results of redetermination pursuant to remand.[2] In the Remand Results, the Department found that that importers did not know, or could not have known, that honey from the People's Republic of China was being sold at less than fair value, and that therefore no critical circumstances existed for any entity examined during the investigation.

On June 18, 2013, the CIT sustained the Department's Remand Results, stating that the Department's determination that critical circumstances did not exist was supported by substantial evidence and was in accordance with the law.[3]

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's June 18, 2013, judgment in this case constitutes a final decision of that court that is not in harmony with the Department's *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Less Than Fair Value Determination

Because there is now a final court decision with respect to this case, the Department amends its final less than fair value determination to reflect that critical circumstances did not exist for any company or entity in the investigation. In the event the CIT's ruling is not appealed or, if appealed, upheld by the Federal Circuit, the Department will instruct CBP to liquidate entries that were suspended, due to the original affirmative critical circumstances finding, without regard to antidumping duties, and to lift suspension of liquidation of such entries.[4]

This notice is issued and published in accordance with sections 516A(c)(1), 735(d), and 777(i)(1) of the Act.

Dated: June 28, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–16347 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Final Results of Redetermination Pursuant to Court Remand *Zhejiang Native Produce & Animal By-Products Import & Export Corp., et al.* v. *United States* Court No. 02–00057 (March 22, 2012) (Remand Results).

[2] *See Zhejiang Native Produce & Animal By-Products Import & Export Corp., et al.*, v. *United States*, Results of Redetermination Pursuant to Remand (December 8, 2010), at 2–8.

[3] *See Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp.* v. *United States*, Court No. 02–00057, Slip Op. 13–76 (Ct. Int'l Trade June 18, 2013).

[4] The Department does not intend to instruct CBP to liquidate any entries at issue that otherwise continue to be suspended pursuant to a separate injunction in another case.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Crab Cost Recovery

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 September 6, 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 extension of a current information collection. Fishery Management Plans (FMP) are developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) The FMP for Bering Sea and Aleutian Islands (BSAI) Crab includes the Crab Rationalization (CR) Program, a limited access system that allocates BSAI Crab resources among harvesters, processors, and coastal communities. The intent of the Alaska Crab Cost Recovery is to

monitor crab landings in the BSAI crab fisheries through receipt of reports and provide for cost recovery payment of fees for all CR crab received.

II. Method of Collection

Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0570.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 31.

Estimated Time per Response: 40 hours for Eligible Crab Community Organization (ECCO) annual report; 2 hours for Registered Crab Receiver (RCR) Ex-vessel Volume and Value Report, 30 minutes for RCR Fee Submittal.

Estimated Total Annual Burden Hours: 113.

Estimated Total Annual Cost to Public: $ 11.

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: July 2, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–16262 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC743

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 Regional Administrator, Southwest Region, NMFS, has made a preliminary determination that an application for an Exempted Fishing Permit (EFP) warrants further consideration. The application was submitted by members of the Pacific sardine fishing industry who request an exemption from seasonal closures of the sardine directed fishery to conduct a survey designed to estimate the population size of Pacific sardine. NMFS requests public comment on the application.

DATES: Comments must be received by July 23, 2013.

ADDRESSES: You may submit comments on this notice identified by 0648–XC743 by any one of the following methods:

- *Mail:* Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- *Fax:* (562) 980–4047, Attn: Joshua Lindsay.

FOR FURTHER INFORMATION CONTACT: A copy of the application can viewed at the following Web site *http://swr.nmfs.noaa.gov/fmd/cps/*; or by contacting Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: On June 17, 2013, NMFS published a final rule to implement the harvest guideline (HG) and annual specifications for the 2013 Pacific sardine fishing season off the U.S. West Coast (78 FR 36117). As part of these management measures, 3,000 metric tons (mt) of the maximum harvest guideline (HG) was subtracted and set aside for potential EFPs. This 3,000 mt set-aside was intended to allow for potential research fishing in the second seasonal period (July 1–September 14, 2013) to occur if that period's directed fishery allocation is reached and directed fishing is closed.

An EFP would allow the fishing activities proposed by the applicants to occur when directed fishing is not allowed. At the March 2013, Council meeting, the Council recommended that NMFS issue an EFP for the total 3,000 mt of the 3,000 mt initially set aside. The applicants proposed the use of 3,000 mt to replicate summer surveys conducted under EFP's approved in 2009–2012.

One of the goals set forth in the EFP application is the development of an index of biomass for Pacific sardine, with the desire that this index be included in the subsequent Pacific sardine stock assessment. If NMFS does not issue this EFP, then the set-aside will be re-allocated to the third period's directed harvest allocation. Likewise any amount of the set-aside allocated to an EFP for use during the closed fishing time in the second allocation period (prior to September 15), but not utilized, will roll into the third allocation period's directed fishery.

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

Dated: July 2, 2013.

Kelly Denit,

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

[FR Doc. 2013–16299 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC745

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) South of Humbug Policy Committee (Policy Committee) for Pacific halibut will hold a working meeting, which is open to the public.

DATES: The Policy Committee meeting will be held Tuesday, July 30, 2013 from 10 a.m. until business for the day is completed.

ADDRESSES: The meeting will be held at the Pacific Council Office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384 telephone: (503) 820–2280. In addition to the Pacific Council office, listening and public comment stations may be available. Please contact the Council office, (503) 820–2280, or our Web site (*www.pcouncil.org*) for more information.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Ames, Staff Officer, Pacific Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The overarching goals of the Policy Committee meeting are to evaluate measures for controlling recreational catch of Pacific halibut south of Humbug Mountain (southern Oregon and northern California) to comply with the allocation provisions of the Catch Sharing Plan and the overall total allowable catch apportioned to Area 2A. No management actions will be decided by the Policy Committee. The Policy Committee's task will be to develop recommendations for Council consideration at their September 2013 meeting in Boise, ID.

Although non-emergency issues not contained in the meeting agenda may come before the Policy Committee for discussion, those issues may not be the subject of formal action during this meeting. Policy Committee 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 Policy Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 2, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–16290 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC746

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) Ad Hoc Committee on Socio-Economic Impact of Yearly Closures will hold a meeting.

DATES: The meeting will be held on Wednesday, July 24, 2013, from 10 a.m. to 4:30 p.m.

ADDRESSES: Caribbean Fishery Management Council Office, 270 Munoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Ad Hoc Committee on Socio-Economic Impact of Yearly Closures will meet to discuss the items contained in the following agenda:

July 24, 2013, 10 a.m.–4:30 p.m.

- Call to order
- Adoption of Agenda
- Review and Analysis of Economic Parameters (per day of fishing) for Puerto Rico and the U.S. Virgin Islands
- Discussion
- Recommendations to CFMC (August 2013 meeting)
- Other business

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified 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 that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 2, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–16291 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC560

Takes of Marine Mammals Incidental to Specified Activities; Office of Naval Research Acoustic Technology Experiments in the Western North Pacific Ocean

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

ACTION: Notice; issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the U.S. Navy's Office of Naval Research (ONR) to take marine mammals, by harassment, incidental to conducting Acoustic Technology Experiments (ATE) in the western North Pacific Ocean.

DATES: This authorization is effective from July 1, 2013, through June 30, 2014.

ADDRESSES: An electronic copy of the application containing a list of the references used in this document may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct

the Secretary of Commerce to authorize, 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, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for a 1-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

The National Defense Authorization Act (NDAA) (Pub. L. 108–136) removed the "small numbers" and "specified geographical region" limitations and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On December 20, 2012, NMFS received an application from ONR for the taking of marine mammals incidental to ATE in the western North Pacific Ocean. ONR provided additional information on March 7, 2013 and NMFS determined that the application was adequate and complete on March 7, 2013. On April 2, 2013, NMFS published a **Federal Register** notice (78 FR 19652) requesting comments from the public concerning ONR's proposed activity along with NMFS' proposed IHA.

ONR will conduct ATE in one of nine provinces comprising the western North Pacific Ocean. The activity will occur for no more than 2 weeks during the spring or summer of 2013. Transmissions from four underwater active acoustic sources may result in the take of marine mammals. Take, by Level B harassment only, of individuals of up to 34 species is authorized for the specified activity. A detailed description of ONR's activity was provided in the proposed IHA (78 FR 19652, April 2, 2013).

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on April 2, 2013 (78 FR 19652). During the 30-day public comment period, we received comments from eighteen individuals and the Marine Mammal Commission (Commission).

Comment 1: Numerous people suggested that the Navy's proposed activity would result in the harm and death of too many marine mammals.

Response: The Navy did not propose, and NMFS is not authorizing, the take of marine mammals by injury or mortality. The Navy's activity may result in the behavioral harassment of marine mammals. It is also important to note that the take estimates provided in the proposed IHA (78 FR 19652, April 2, 2013) are the maximum amount of take expected for any of the nine provinces in the western North Pacific Ocean.

Comment 2: One commenter suggested that marine mammal species were omitted from some of the proposed action areas in the analysis (i.e., short-beaked common dolphin, gray whale, Pacific white-sided dolphin, pantropical spotted dolphin, and sei whale).

Response: Short-beaked common dolphins—Short-beaked common dolphins are a cool-temperate species and they are not expected to occur in the South China Sea. The Smith et al (1997) paper the commenter refers to states that skeletal remains of long-beaked common dolphins were found in Vietnamese whale temples, but no evidence of short-beaked common dolphins have been recorded for the region. Furthermore, several visual surveys in the western Pacific region and the Main Hawaiian Islands have not observed short-beaked common dolphins (Barlow, 2006; Fulling *et al.*, 2011). Given the lack of observations in recent surveys, the density estimate that was derived from data in the eastern North Pacific (Ferguson and Barlow, 2001 and 2003) was modified to reflect the expected distribution of short-beaked common dolphins in the Sea of Japan and North Philippine Sea provinces and the unlikely presence of short-beaked common dolphins in the South China Sea, West Philippine Sea, Offshore Guam, and Northwest Pacific Ocean (10–25° N).

Gray whale—Western Pacific gray whales are believed to migrate across the East China Sea to and from unknown winter breeding grounds. The reference that the commenter cites (Omura, 1988) has anecdotal observations of gray whales in the Yellow Sea in May (spring). There is no indication if any observations in summer months and western Pacific gray whales are known to occur in more northern areas during the summer (Meier *et al.*, 2007; Weller *et al.*, 2002).

Pacific white-sided dolphins—Pacific white-sided dolphins display a north-south migratory pattern, moving from warm-temperate waters in winter to cool-temperate waters in summer. The commenter cites Hayano et al. (2004), which states, "In the Sea of Japan, the dolphins were observed mostly in coastal waters off Iki Island in January-March, and off the central-northern Japan in June-July, suggesting they migrate northward along the coast of Japan in spring to off the western coast of Hokkaido and/or to the Sea of Okhotsk where they summer." The cited reference of Miyashita (1993) does not include any reference to Pacific white-sided dolphins. Pacific white-sided dolphins are not expected to be in the southern half of the Sea of Japan during summer months.

Pantropical spotted dolphins—Pantropical spotted dolphins inhabit tropical and subtropical waters, from south of approximately 37° N. The map of sightings in June from Miyashita (1993) (as cited by the commenter) show them south of 35° N. As the East of Japan province is at the northern limit of their distributional range, they are not expected in this region during the cold-water months of spring, but may be present during summer months.

Sei whale—The papers that the commenter cited on passive acoustic recordings (Stafford et al., 2001; Stafford, 2003) do not refer to sei whales. As for the two cited papers on recent surveys (DoN, 2007; Fulling et al., 2011), they both refer to the same survey that occurred in the offshore Guam region in January-April 2007. There were eight sightings of sei whales during these winter months, but there is no evidence to suggest that sei whales are found offshore Guam in summer months.

Comment 3: One commenter stated that harassment estimates were omitted for some species in the area (i.e., *Kogia* spp. in the East China Sea and Risso's dolphin in the South China Sea).

Response: The value of 0.0000 for both species' was inadvertently left out of the table for Level A harassment. This does not change NMFS' analysis or authorized take amounts.

Comment 4: One commenter suggested that the harassment analysis was based on calculations using an out-of-date database (Generalized Digital Environmental Model (GDEM) 2.5) and inappropriate model.

Response: The Navy compared sound velocity profiles between GDEM 2.5 and 3.0 at each of the nine modeling sites. There were no significant differences observed in the profiles at any of the nine sites. The Navy reran the propagation model with GDEM 3.0 data at the experiment site for multiple odontocetes, and the harassment estimates using GDEM 2.5 were more conservative. It is important to note that the Navy's activity is taking place in deep water areas, so the sound speed variability between the two databases for this activity is negligible. Future analyses of this nature will utilize GDEM 3.0 data.

The commenter suggested that the High Frequency Bottom Loss (HFBL) model should have been used; however, this model is not appropriate for analyzing sources below 1.5 kHz. Moreover, the Navy's activity will be conducted in deep water so that bottom loss and type are negligible considerations.

Comment 5: The Commission recommended that NMFS assess the potential risk to marine mammals from the ATE by requiring ONR to (1) provide the best available mean density estimates plus two standard deviations for the densities based on surveys in areas other than the locations where the experiments could occur; (2) describe any known or suspected sources of bias associated with the use of those data; and (3) reestimate the numbers of takes using those mean densities plus two standard deviations.

Response: NMFS disagrees that the density estimates need to be reevaluated. The estimation of take already overestimates what is likely to occur because the Navy considered a worst-case scenario of nine different locations (only one of which the activity will actually occur in). Furthermore, the analysis does not take into consideration the required mitigation and monitoring measures in the IHA.

Comment 6: The Commission recommended that NMFS require ONR to use a third clearance time category of 60 minutes for deep-diving species after a delay or shut down, if the animal is not observed to have left the mitigation zone.

Response: NMFS disagrees that the clearance time should be lengthened for deep-diving species for the following reasons: (1) Just because an animal can dive for longer than 30 minutes does not mean that they always do, so the 60-minute delay would only potentially add value in instances when animals had remained underwater for more than 30 minutes; (2) The animal would need to have stayed in the immediate vicinity of the sound source for an hour. Considering the maximum area that both the vessel and the animal could cover in an hour, it is improbable that this would randomly occur. Moreover, considering that many animals have been shown to avoid both acoustic sources and ships without acoustic sources, it is improbable that a deep-diving cetacean (as opposed to a dolphin that might bow ride) would choose to remain in the immediate vicinity of the acoustic source; and (3) Visual observers are not always able to differentiate species to the degree that would be necessary to implement this measure. NMFS does not believe that increasing the clearance time to 60 minutes will add to the protection of marine mammals in the vast majority of cases, and therefore, we have not required it.

Comment 7: The Commission recommended that NMFS require ONR to use passive acoustic monitoring continually during the experiments to supplement daytime visual monitoring.

Response: NMFS disagrees that passive acoustic monitoring should be required during daytime hours. However, ONR will use passive acoustic monitoring at night and during other periods of decreased visual observation capabilities. NMFS does not believe that supplementing visual monitoring with passive acoustic monitoring during daytime hours will add to the protection of marine mammals in the vast majority of cases, as the location of a marine mammal cannot be identified using a single sound recorder.

Marine Mammals in the Area of the Specified Activity

Thirty-four marine mammal species may potentially occur in at least one of the nine provinces comprising the western North Pacific Ocean in which the ATE may occur. Eight of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.) and depleted under the MMPA: blue whale (*Balaenoptera musculus*), fin whale (*Balaenoptera physalus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), North Pacific right whale (*Eubalaena japonica*), sei whale (*Balaenoptera borealis*), sperm whale (*Physeter macrocephalus*), and Hawaiian monk seal (*Monachus schauinslandi*). Although 34 species of marine mammals may potentially occur in the waters of the nine western North Pacific provinces, the two species of *Kogia* are often considered together due to the difficulty in identifying these animals to the species level at sea and the sparse information that is known about the individual species. The 34 species considered include eight mysticetes, 25 odontocetes, and one pinniped (Table 1). Detailed descriptions of these species are provided in the section 4 of ONR's application and summarized in the **Federal Register** notice for a proposed IHA (78 FR 19652, April 2, 2013) and not repeated here. Further information on all the species can also be found in the NMFS Stock Assessment Reports (SAR) online: *http://www.nmfs.noaa.gov/pr/pdfs/sars*.

TABLE 1—MARINE MAMMALS POTENTIALLY OCCURRING IN THE NINE PROVINCES OF THE WESTERN NORTH PACIFIC WHERE THE ATE MAY BE CONDUCTED AND THEIR STATUS

Common name	Scientific name	ESA and MMPA status
Mysticetes		
Blue Whale	*Balaenoptera musculus*	Endangered/Depleted.
Bryde's Whale	*Balaenoptera edeni.*	
Common Minke Whale	*Balaenoptera acutorostrata.*	
Fin Whale	*Balaenoptera physalus.*	Endangered/Depleted.
Gray Whale	*Eschrichtius robustus*	Endangered/Depleted.[1]
Humpback Whale	*Megaptera novaeangliae*	Endangered/Depleted.
North Pacific Right Whale	*Eubalaena japonica*	Endangered/Depleted.
Sei Whale	*Balaenoptera borealis*	Endangered/Depleted.
Odontocetes		
Baird's Beaked Whale	*Berardius bairdii.*	
Blainville's Beaked Whale	*Mesoplodon densirostris.*	
Common Bottlenose Dolphin	*Tursiops truncatus.*	
Cuvier's Beaked Whale	*Ziphius cavirostris.*	
Dall's Porpoise	*Phocoenoides dalli.*	
False killer whale	*Pseudorca crassidens.*[2]	
Fraser's Dolphin	*Lagenodelphis hosei.*	
Ginkgo-toothed Beaked Whale	*Mesoplodon ginkgodens.*	
Hubbs' Beaked Whale	*Mesoplodon carhubbsi.*	
Killer Whale	*Orca orcinus.*	
Kogia spp.		
Longman's Beaked Whale	*Indopacetus pacificus.*	
Melon-headed Whale	*Peponocephala electra.*	
Pacific White-sided Dolphin	*Lagenorhynchus obliquidens.*	
Pantropical Spotted Dolphin	*Stenella attenuata*	
Pygmy Killer Whale	*Feresa attenuata.*	
Risso's Dolphin	*Grampus griseus.*	
Rough-toothed Dolphin	*Steno bredanensis.*	
Short-beaked Common Dolphin	*Delphinus delphis.*	
Short-finned Pilot Whale	*Globicephala macrorhynchus.*	
Sperm Whale	*Physeter macrocephalus*	Endangered/Depleted.
Spinner Dolphin	*Stenella longirostris.*	
Stejneger's Beaked Whale	*Mesoplodon stejnegeri.*	
Striped Dolphin	*Stenella coeruleoalba.*	
Pinnipeds		
Hawaiian Monk Seal	*Monachus schauinslandi*	Endangered/Depleted.

[1] Only the western Pacific population is listed as endangered under the ESA.
[2] As a species, the false killer whale is not listed under the ESA; however, the insular Main Hawaiian Islands distinct population segment (DPS) of false killer whales is listed as endangered under the ESA.

Potential Effects of the Specified Activity on Marine Mammals

This section of the proposed rule included a detailed account of potential effects (78 FR 19652, April 2, 2013), including tolerance, masking, behavioral disturbance, hearing impairment, non-auditory physiological effects, stranding, and mortality. In summary, acoustic stimuli generated by underwater signals from no more than four acoustic sources have the potential to cause Level B harassment of marine mammals in the action area. The impacts to marine mammals from these sources are expected to be limited to some masking effects and behavioral responses in the areas ensonified by the acoustic sources.

Permanent hearing impairment, in the unlikely event that it occurs, would constitute injury, but temporary threshold shift (TTS) is considered a type of Level B harassment (Southall *et al.*, 2007). Although the possibility cannot be entirely excluded, it is unlikely that the ATE will result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is possible, but NMFS expects the disturbance to be localized and short-term.

Anticipated Effects on Marine Mammal Habitat

No ESA-designated critical habitats of any marine mammal species are located in or near the waters of the nine western North Pacific Ocean provinces in which the ONR ATE may be conducted. There are also no international marine mammal protected areas located within the vicinity of the experiment area. During the ONR ATE, only acoustic transducers and receivers as well as standard oceanographic equipment will be deployed. Experimental systems are planned to be retrieved after data collection has been completed. The acoustic and oceanographic instrumentation that would be deployed operates in accordance with all applicable international rules and regulations related to environmental compliance, especially for discharge of potentially hazardous materials. Therefore, no discharges of pollutants will result from the deployment and operation of the acoustic and oceanographic instruments and systems.

During the ONR ATE, deployment and operation of the sound sources will

result in no physical alterations to the marine environment other than addition of elevated underwater sound levels, which may have some effect on marine mammals. Any increase in underwater sound levels will be temporary (lasting no more than 2 weeks) and limited in geographic scope. A small number of marine mammals present near the proposed activity may be temporarily displaced due to sound source transmissions. However, concentrations of marine mammals and/or marine mammal prey species are not expected to be encountered in or near the vicinity of the waters in the western North Pacific provinces in which the ONR ATE may occur. There are no critical feeding, breeding, or migrating areas for any marine mammal species that may occur in the action area. No long-term impacts associated with the increase in ambient noise levels are expected.

Mitigation Measures

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses (where relevant).

The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that "least practicable adverse impact" shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the "military readiness activity." The training activities described in ONR's application are considered military readiness activities.

The following mitigation measures will be implemented during the ONR ATE:

Vessel Movement

ONR will maneuver the research vessel, as feasible, to avoid closing within 457 m (1,499 ft) of a marine mammal. Standard operating procedures for the research vessel will be to avoid collision with marine mammals, including maintaining a minimum safe maneuvering distance from detected animals.

Mitigation Zone

ONR will use a 1-km mitigation zone to avoid take by Level A harassment and reduce the potential impacts to marine mammals from ONR ATE. Mitigation zones are measured as the radius from a source and represent a distance that visual observers will monitor during daylight hours to ensure that no marine mammals enter the designated area. The mitigation zone will be monitored for 30 minutes before the active acoustic source transmissions begin and will continue until 30 minutes after the active acoustic source transmissions are terminated, or 30 minutes after sunset, whichever comes first. Visual detections of marine mammals will be communicated immediately for information dissemination and appropriate action, as described directly below.

Delay and Shut-Down Procedures

During daytime transmissions, ONR will immediately delay or shut down active acoustic source transmissions if a marine mammal is visually detected within the 1 km exclusion zone. Based on NMFS' recommendation, transmissions will not commence/resume for 15 minutes (for small odontocetes and pinnipeds) or 30 minutes (for mysticetes and large odontocetes) after the animal has moved out of the exclusion zone or there has been no further visual detection of the animal. During nighttime transmissions, ONR will immediately delay or shut down active acoustic source transmissions if a marine mammal is detected using passive acoustic monitoring. Based on NMFS' recommendation, transmissions will commence/resume 15 minutes (for small odontocetes and pinnipeds) or 30 minutes (for mysticetes and large odontocetes) after there has been no further detection of the animal.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of assuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- 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, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the applicant's proposed measures and those proposed by NMFS, we have determined that the above 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, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) 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 ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring

ONR will conduct marine mammal monitoring during the specified activity for the purpose of implementing required mitigation and to provide information on species presence and abundance in the action area. Protected species observers (both visual and acoustic) will maintain a log that includes duration of time spent searching/listening for marine mammals; numbers and species of marine mammals detected; any unusual marine mammal behavior; and the date, time, and location of the animal and any sonobuoy deployments. ONR's monitoring plan is described below.

Vessel-based Visual Monitoring—ONR will continuously monitor for marine mammals when active acoustic sources are being used during daylight hours. Two visual observers will be on effort during active ATE source transmissions occurring during daylight hours. One observer will be positioned on the deck level above the bridge, about 12 m above the water line, while the second observer will be located on the bridge level, about 9.8 m above the water line. Protected species observers will be trained for visually detecting and identifying marine mammal species. Observers will begin monitoring 30 minutes before the active acoustic source transmissions are scheduled to begin and will continue

until 30 minutes after the active acoustic source transmissions are terminated, or 30 minutes after sunset, whichever comes first.

Passive Acoustic Monitoring—ONR will conduct passive acoustic monitoring from the vessel when active acoustic sources are deployed during nighttime (i.e., no more than 35 hours total) and other periods of decreased visual observation capabilities. Passive acoustic monitoring will include listening for vocalizations and visually inspecting spectrograms of radio frequency-transmitted signals from a deployed AN/SSQ–53 DIFAR sonobuoy by personnel trained in detecting and identifying marine mammal sounds. Passive acoustic monitoring will begin 30 minutes before transmissions are scheduled to begin and continue until 30 minutes after transmissions are terminated, or 30 minutes after sunrise, whichever occurs first.

If a passively detected sound is estimated to be from a marine mammal, the acoustic observer will notify the appropriate personnel and shutdown procedures will be implemented. For any marine mammal detection, the Test Director will order the immediate delay/suspension of the active acoustic source transmissions and/or deployment. Based on NMFS' recommendation, transmissions may commence/resume 15 minutes (for small odontocetes) or 30 minutes (for mysticetes and large odontocetes) after there has been no further detection of the animal.

Reporting

Protected species observers (both visual and acoustic) will maintain a log that includes duration of time spent searching/listening for marine mammals; numbers and species of marine mammals detected; any unusual marine mammal behavior; and the date, time, and location of the animal and any sonobuoy deployments. Data would be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). Based on NMFS' recommendation, protected species observers will record the behavioral state of all marine mammals observed and the status of the active acoustic source when observers see an animal.

ONR will submit two reports to NMFS within 90 days after the end of the proposed activity: one unclassified report and one classified report. The reports will describe the operations that were conducted and sightings of marine mammals near the operations. The reports will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day reports will summarize the dates and locations of active acoustic source transmissions, and all marine mammal sightings (dates, times, locations, activities, associated active acoustic transmissions). The reports will also include estimates of the number and nature of exposures that could result in 'takes' of marine mammals.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike, gear interaction, etc.), ONR would immediately cease the specified activities and immediately (as soon as possible, according to security protocol) report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS. The report must include the following information:

Time, date, and location (latitude/longitude) of the incident;

Name and type of vessel involved;

Vessel's speed during and leading up to the incident;

Description of the incident

Status of all sound sources used in the 24 hours preceding the incident;

Water depth;

Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

Description of all marine mammal observations in the 24 hours preceding the incident;

Species identification or description of the animal(s) involved;

Fate of the animal(s); and

Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with ONR to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ONR may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ONR 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 (i.e., in less than a moderate state of decomposition as described in the next paragraph), ONR would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with ONR to determine whether modifications in the activities are appropriate.

In the event that ONR discovers an injured or dead marine mammal, and the lead protected species observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ONR would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS within 24 hours of the discovery. ONR would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

With respect to military readiness activities, section 3(18)(B) of the MMPA defines "harassment" as: any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

This section of the proposed rule included a detailed description of the Navy's analysis and how take estimates were calculated (78 FR 19652. April 2, 2013). That information has not changed and is not repeated here. In summary, only take by Level B harassment is anticipated and authorized as a result of the specified activity. Acoustic stimuli (i.e., increased underwater sound) generated during the transmission of active acoustic sources have the potential to cause temporary, short-term changes in marine mammal behavior. There is no evidence that the planned activities will result in injury, serious injury, or mortality within the specified geographic area. The required mitigation and monitoring measures are expected to minimize any potential risk for injury or mortality. The maximum estimated take amounts are summarized in Table 2 below.

TABLE 2—MAXIMUM ESTIMATED TAKE FROM EXPOSURE TO ACOUSTIC SOURCES EMPLOYED DURING THE ONR ATE BY MARINE MAMMAL SPECIES POTENTIALLY OCCURRING IN THE NINE PROVINCES OF THE WESTERN NORTH PACIFIC OCEAN

Marine mammal species	Maximum MMPA Level A harassment	Maximum MMPA Level B harassment	Authorized take by Level B harassment
Mysticetes			
Blue Whale	0.0000	0.0156	1
Bryde's Whale	0.0000	1.9562	2
Common Minke Whale	0.0000	7.70636	8
Fin Whale	0.0000	1.70956	2
Gray Whale	0.0000	0.0038	1
Humpback Whale	0.0000	1.6395	2
North Pacific Right Whale	0.0000	0.0214	1
Sei Whale	0.0000	1.0446	2
Odontocetes			
Baird's Beaked Whale	0.0000	0.6882	1
Blainville's Beaked Whale	0.0000	0.5985	1
Common Bottlenose Dolphin	0.0000	23.7805	24
Cuvier's Beaked Whale	0.0000	2.2811	3
Dall's Porpoise	0.0000	53.0706	54
Dwarf Sperm Whale	0.0000	4.2209	5
False Killer Whale	0.0000	7.3891	8
Fraser's Dolphin	0.0000	5.7854	6
Ginkgo-toothed Beaked Whale	0.0000	0.5985	1
Hubbs' Beaked Whale	0.0000	0.1928	1
Killer Whale	0.0000	0.1600	1
Kogia spp.	0.0000	2.2840	3
Longman's Beaked Whale	0.0000	0.2993	1
Melon-headed Whale	0.0000	15.4891	16
Mesoplodon spp.	0.0000	0.1928	1
Pacific White-sided Dolphin	0.0000	7.5305	8
Pantropical Spotted Dolphin	0.0000	35.8584	36
Pygmy Killer Whale	0.0000	4.3103	5
Pygmy Sperm Whale	0.0000	1.7203	2
Risso's Dolphin	0.0000	11.3736	12
Rough-toothed Dolphin	0.0000	5.8877	6
Short-beaked Common Dolphin	0.0000	86.3962	87
Short-finned Pilot Whale	0.0000	18.7461	19
Sperm Whale	0.0000	1.6701	2
Spinner Dolphin	0.0000	2.1661	3
Stejneger's Beaked Whale	0.0000	0.2855	1
Striped Dolphin	0.0000	23.9042	24
Pinnipeds			
Hawaiian Monk Seal	0.0000	0.0067	1

Negligible Impact Analysis and 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:

- The number of anticipated mortalities;
- The number and nature of anticipated injuries;
- The number, nature, intensity, and duration of Level B harassment; and
- The context in which the takes occur.

As mentioned previously, NMFS estimates that 34 species of marine mammals may be affected by Level B harassment during the ONR ATE. No injuries, serious injuries, or mortalities are anticipated to occur as a result of the specified activity, and none are authorized. Additionally, for reasons presented earlier in this document, temporary or permanent hearing impairment is not anticipated to occur during the specified activity. Only short-term behavioral disturbance is anticipated to occur due to the limited duration of active acoustic transmissions and the estimated marine mammal densities in the area. ONR's specified activity will occur for about 2 weeks and active acoustic sources will operate intermittently during this time. Due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival. Furthermore, there are no critical feeding, breeding, or migrating areas for any of the species that may be found there at the time of the activity.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting the ONR ATE, may result, at worst, in a temporary modification in behavior, and/or low-level physiological effects (Level B harassment) of certain species of marine mammals. Of the ESA-listed marine mammals that may potentially occur in the action area, North Pacific right whale populations lack sufficient data to determine trends in abundance and sperm whale populations are not

well known in the southern hemisphere. While behavioral modifications, including temporarily vacating the area during the transmission of active acoustic transmissions, may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas and the short and sporadic duration of the demonstration, have led NMFS to determine that this action will have a negligible impact on the species in the specified geographic region.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that ONR's specified activity may result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from the ATE will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Of the species of marine mammals that may occur in the proposed demonstration area, eight are listed as endangered under the ESA: blue whale, fin whale, gray whale, humpback whale, North Pacific right whale, sei whale, sperm whale, and Hawaiian monk seal. Under section 7 of the ESA, ONR initiated formal consultation with NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on their specified activity. NMFS' Office of Protected Resources, Permits and Conservation Division, also initiated formal consultation under section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Act Interagency Cooperation Division. NMFS issued a Biological Opinion concluding that the Navy's action is not likely to jeopardize the continued existence of endangered blue, fin, gray, humpback, North Pacific right, sei, or sperm whales or Hawaiian monk seals, or adversely modify critical habitat designated for those species.

National Environmental Policy Act (NEPA)

ONR prepared a draft Overseas Environmental Assessment (OEA) to address the potential environmental impacts that could occur as a result of the proposed activity. To meet NMFS' National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements for the issuance of an IHA to ONR, NMFS prepared an independent NEPA analysis, which included an EA and Finding of No Significant Impact (FONSI). These documents are available on our Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. NMFS determined that issuance of the IHA will not significantly impact the quality of the human environment and that preparation of an Environmental Impact Statement is not required.

Dated: June 28, 2013.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–16296 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC498

Takes of Marine Mammals Incidental to Specified Activities; Demolition and Construction Activities of the Children's Pool Lifeguard Station at La Jolla, California

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

ACTION: Notice; issuance of an Incidental Take Authorization (ITA).

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the City of San Diego to take small numbers of three species of marine mammals, by Level B harassment, incidental to demolition and construction activities of the Children's Pool Lifeguard Station in La Jolla, California, June to December 2013.

DATES: Effective June 28, 2013, through June 27, 2014.

ADDRESSES: A copy of the final IHA and application are available by writing 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 or by telephoning the contacts listed here.

A copy of the IHA application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA, as amended (16 U.S.C. 1371 (a)(5)(D)), directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals 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). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental

harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

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]. 16 U.S.C. 1362(18).

Summary of Request

On December 3, 2012, NMFS received an application from the City of San Diego, Engineering and Capital Projects Department, requesting an IHA. A revised IHA application was submitted on April 1, 2013. The requested IHA would authorize the take, by Level B (behavioral) harassment, of small numbers of Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*) incidental to demolition and construction activities of the Children's Pool Lifeguard Station at La Jolla, California. The demolition and construction operations are planned to take place during June to December 2013 in La Jolla, California. On May 3, 2013, NMFS published a notice in the **Federal Register** (78 FR 25958) making preliminary determinations and proposing to issue an IHA. The notice initiated a 30-day public comment period. Additional information on the demolition and construction activities at the Children's Pool Lifeguard Station is contained in the application, which is available upon request (see **ADDRESSES**).

Description of the Specified Activity

The Children's Pool was created in 1931 by building a breakwater wall which created a protected pool for swimming. This pool has partially filled with sand, but still has open water for swimming, as well as a beach for sunbathing and walking. The Children's Pool and nearby shore areas are used by swimmers, sunbathers, SCUBA divers and snorkelers, shore/surf fishermen, school classrooms, tide pool explorers, kayakers, surfers, boogie and skim boarders, seal, bird and nature waters as well as other activities by the general public. Over the last three years (2010 through 2012), an average of 1,556,184 people have visited the Children's Pool and lifeguards have taken an average of 8,147 preventive actions and 86 water rescues annually (CASA, 2010; 2011; 2012). The existing lifeguard facility was built in 1967, it is old, deteriorating from saltwater intrusion, and no longer serves neither the needs of the lifeguard staff nor the beach-going public. The structure was condemned on February 22, 2008 due to its deteriorated conditions and the lack of structural integrity; therefore, it can no longer be used in its current state. Since the existing building is no longer viable, a temporary lifeguard tower was moved in, but because of basic year-round working condition needs for the lifeguards and the demand for lifeguard services, a new station is required. The project includes the demolition of the existing lifeguard station and construction of a new, three-story, lifeguard station on the same site. The new facility will have an observation tower, first aid room, male/female locker rooms, and a second observation/ ready room area, an accessible ramp to the new unisex public restrooms on the lower floor, a public viewing area, and a plaza in front of the lifeguard station. The new lifeguard station facilities will provide a 270° view of beaches, bluffs, and reefs for continued service to the public onshore as well as in the water.

Sound levels during all phases of the project will not exceed 110 dB re 20 µPa at five feet from the sound sources. The 110 dB estimate is based on equipment manufacturers estimates obtained by the construction contractor. The City of San Diego utilized the published manufacturers data based on the planned equipment (i.e., a 980 Case backhoe, dump truck, air compressor, electric screw guns, jackhammer, concrete saw, and chop saws) to be utilized on the project site. Operation of the equipment is the primary activity within the demolition and construction of activities that is likely to affect marine mammals by potentially exposing them to in-air (i.e., airborne or sub-aerial) noise. Generally, harbor seals are considered skittish and have the tendency to react or flush into the water at low levels of sound and/or movements. While a range of behavioral responses can be expected, it is difficult to predict what activities might cause noticeable behavioral reactions with Pacific harbor seals at this site. Children's Pool is a highly disturbed haul-out site and rookery, and the harbor seals observed at this location are unusually tolerant to the presence of humans, and do not respond in the same manner when exposed to stimuli (e.g., laughing, clapping, stomping, climbing, snorkeling, swimming, wading, traffic, sirens, barking dogs, and road construction) when compared to the behavior of other harbor seals in other "non-urbanized" areas (Yochem and Stewart, 1998; Hanan & Associates, 2004; 2011; Hanan, 2005) (see *http://www.youtube.comwatch?v=4IRUYVTULsg*). During the working day, the City of San Diego estimates there will be sound source levels above 90 dB re 20 µPa during 106 days, including 27 days of 100 to 110 dB re 20 µPa at the demolition and construction site. The contractor used published or manufacturer's measurements to estimate sound levels. On average, pinnipeds will be about 30.5 meters (m) (100 feet [ft]) or more from the construction site with a potential minimum of about 15.2 m (50 ft) and a peak of about 83 dB re 20 µPa at the mean hauling-out distance (30.5 m). The City of San Diego used the formula and online calculator on the Web site: *http://sengpielaudio.com/calculator-distance.htm* and measured distances from the sound source to determine the area of potential impacts from in-air sound. No studies of ambient sound levels have been conducted at the Children's Pool, the City of San Diego intends to measure in-air background noise levels in the days immediately prior to, during, and after the demolition and construction activities.

The existing lifeguard station is located on a bluff above Children's Pool (32° 50′ 50.02″ North, 117° 16′ 42.8″ West) nearby reef and beach areas (see detailed maps and photographs on pages 30 to 31 of the "Mitigated Negative Declaration" in the IHA application). The building has deteriorated significantly and must be removed. A backhoe will be used for demolishing the existing structure, and materials will be loaded into dump trucks to be hauled offsite. Material will be hauled to a local landfill where it will be separated into recycled content and waste. In its place, a new lifeguard station is scheduled to be constructed within and adjacent to the existing facility. The new three-story, building will contain beach access level public restrooms and showers, lifeguard lockers, and sewage pump room; second level containing two work stations, ready/observation room, kitchenette, restroom, and first aid station; and third "observation" level will include a single occupancy observation space, radio storage closet, and exterior catwalk. Interior stairs will link the floors. The existing below grade retaining walls will remain in place and new retaining walls will be constructed for a ramp from

street level to the lower level for emergency vehicle beach access and pedestrian access to the lower level restrooms and showers. A 5.6 m (18.5 ft) wall would be located along the north end of the lower level. The walls would be designed for a minimum design life of 50 years and would not be undermined from ongoing coastal erosion. The walls would not be readily viewed from Coast Boulevard, the public sidewalks or the surrounding community.

Lower level improvements include new beach access restrooms and showers, lifeguard lockers, and a sewage pump room. The plaza level plan includes two work stations, a ready/observation room, kitchenette, restroom and first aid station. The observation level includes a single occupancy observation space, radio storage closet, and exterior catwalk. The existing plaza would be reconfigured to provide a 3.1 m (10 ft) wide ramp for emergency vehicles to the beach and for pedestrians to the lower level accessible restrooms and showers. Enhanced paving, seating and viewing space, drinking fountains, adapted landscaping and water efficient irrigation is also included. No material is expected to enter or be washed into the marine environment that may affect water quality, as the City of San Diego has developed the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System and the Stormwater Pollution Prevention Plan, required for the demolition and construction activities.

Demolition and construction of the new lifeguard station is estimated to take approximately 7 months (148 actual demolition and construction days) and be completed by December 15, 2013. Demolition and construction activities will occur Monday through Friday (no work will occur on holidays) during daylight hours only, as stipulated in the "Mitigated Negative Declaration" and local ordinances. Demolition and construction activities are divided into phases:

(1.) Mobilization and temporary facilities;
(2.) Demolition and site clearing;
(3.) Site preparation and utilities;
(4.) Building foundation;
(5.) Building shell;
(6.) Building exterior;
(7.) Building interior;
(8.) Site improvements; and
(9.) Final inspection and demobilization.

Detail summary (phases overlap in time):

(1.) *Mobilization and temporary facilities:*

Install—temporary perimeter fencing, temporary utilities and foundation, temporary life guard tower, temporary office trailer, temporary sanitary facilities, and temporary sound wall/visual barrier.

Equipment—truck, backhoe, trailer, small auger, hand/power tools, and concrete truck.

Timeframe—Approximately 12 days.

(2.) *Demolition and site clearing:*

Dismantle and remove existing station, remove hardscape and landscape, trucks expected to haul-off less than 5 loads of debris via Coast Boulevard.

Equipment—excavator, hydraulic ram, jackhammer, trucks, and hand/power tools.

Timeframe—Approximately 13 days.

(3.) *Site preparation and utilities:*

Rough grade building site and modify underground utilities.

Equipment—loader, backhoe, and truck.

Timeframe—Approximately 17 days.

(4.) *Building foundation:*

Dig/shore foundation, pour concrete, waterproofing, and remove shoring.

Equipment—backhoe, concrete pump/truck, hand/power tools, small drill rig, and crane.

Timeframe—Approximately 22 days.

(5.) *Building shell:*

Pre-cast concrete panel walls, panel walls, rough carpentry and roof framing, wall board, cable railing, metal flashing, and roofing.

Equipment—crane, truck, fork lift, hand/power tools.

Timeframe—Approximately 35 days.

(6.) *Building exterior:*

Doors and windows, siding paint, light fixtures, and plumbing fixtures.

Equipment—truck, hand/power tools, and chop saw.

Timeframe—Approximately 4 weeks.

(7.) *Building interiors:*

Walls, sewage lift station, rough and finish mechanical electrical plumbing structural (MEPS), wall board, door frames, doors and paint.

Equipment—truck, hand/power tools, and chop saw.

Timeframe—Approximately 37 days.

(8.) *Site improvements:*

Modify storm drain, concrete seat walls, curbs, and planters, fine grade, irrigation, hardscape, landscape, hand rails, plaques, and benches.

Equipment—backhoe, truck, hand/power tools, concrete pump/truck, and fork lift.

Timeframe—Approximately 37 days.

(9.) *Final inspection, demobilization:*

System testing, remove construction equipment, inspection, and corrections.

Equipment—truck, and hand/power tools.

Timeframe—Approximately 41 days.

The exact dates of the planned activities depend on logistics and scheduling. Additional details regarding the demolition and construction activities of the Children's Pool Lifeguard Station can be found in the City of San Diego's IHA application. The IHA application can also be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Dates, Duration, and Specific Geographic Region

The La Jolla Children's Pool Lifeguard Station is located at 827 ½ Coast Boulevard, La Jolla, California 92037 (32°50′ 50.02″ North, 117°16′42.8″ West. Because the City of San Diego is already requiring a moratorium on all construction activities during harbor seal pupping and weaning (i.e., December 15th to May 30th; see page 5 of the Negative Declaration in the IHA application), work on this project can only be performed between June 1st and December 15th of any year. The City of San Diego is planning to begin the project at the Children's Pool in La Jolla, California on June 1, 2013, with site preparation (see page 30 to 31 of the Negative Declaration in the IHA application) followed by demolition of the existing station and construction of the new lifeguard station to be completed by December 15, 2013. The IHA may extend through June of 2014 to finish the demolition and construction activities if needed. The locations and distances (in ft) from the demolition/construction site to the Children's Pool haul-out area, breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area can be found in the City of San Diego's IHA application.

Comments and Responses

A notice of the proposed IHA for the City of San Diego's demolition and construction activities was published in the **Federal Register** on May 3, 2013 (78 FR 25958). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission), Western Alliance for Nature (WAN), San Diego Council of Divers (SDCOD), and numerous individuals. The comments are online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are their substantive comments and NMFS's responses:

Comment 1: The Commission recommends that NMFS issue the IHA, subject to inclusion of the proposed mitigation and monitoring measures.

Response: NMFS concurs with the Commission's recommendation and has issued the IHA to the City of San Diego. NMFS has modified several of the monitoring and mitigation measures included in the proposed IHA for practicability reasons, as well as included several additional measures (see "Mitigation" and "Monitoring and Reporting" sections below for more information).

Comment 2: SDCOD and several individuals support the City of San Diego's demolition and construction activities at the Children's Pool Lifeguard Station and would like the action to begin immediately. The IHA application is well-researched and accurate, as it invokes every necessary caution and more, as Dr. Doyle Hanan has thoroughly documented the information in reports and has shown that the population of harbor seals is robust and resilient and not adversely impacted by human activity. The area is considered very valuable for recreational purposes to people who live near this location. The construction of the new lifeguard station is important for human safety.

Response: NMFS has factored the commenters' recommendations and opinions into our final decision.

Comment 3: An individual state's that they support the Children's Pool as an important haul-out site and rookery for harbor seals and other marine mammals, and oppose the issuance of the IHA to the City of San Diego.

Response: Since February 2000, NMFS has managed the Children's Pool as a haul-out and rookery for harbor seals and other pinnipeds. NMFS based this decision on the understanding that harbor seals first began to haul-out at the Children's Pool in 1995, with ever increasing numbers and in 1999, for the first time, harbor seal pup births were documented at the Children's Pool. As described in detail in the **Federal Register** notice for the proposed IHA (78 FR 25957, May 3, 2013), as well as in this document, NMFS does not believe that the City of San Diego's demolition and construction activities would cause injury, serious injury, or mortality to marine mammals, nor are those effects authorized under the IHA. The required monitoring and mitigation measures that the City of San Diego would implement during the demolition and construction activities would further reduce the adverse effects on marine mammals to the lowest levels practicable. NMFS anticipates only behavioral disturbance to occur during the conduct of the demolition and construction activities at the Children's Pool Lifeguard Station.

Comment 4: WAN and several individuals state that all demolition and construction work should be completed and cease after November 1st to avoid sensitive and critical life stages of harbor seals and not cause displacement from breeding areas. In the pregnancy cycle, the female is impregnated soon after weaning the pup. If the majority of births occur February, March, and April, weaning occurs from mid-March through mid-May. Implantation occurs as early as mid-April through mid-June. The earliest second trimester could occur as early as mid-July. The earliest third trimester could occur in November.

Pregnant females have been sighted on the beach beginning in late October to early November. Approximately 90% of adult females are in the advanced stages of pregnancy by early November. Hauling-out to rest is a daily requirement, and prolonged exposure to demolition and construction activities has the potential to displace marine mammals from breeding areas. The proposed IHA allows demolition and construction activities to continue until December 31st, which is two weeks after the start of the pupping season (at this latitude) and long after the harbor seals are in advanced stages of pregnancy. The project scheduling includes demolition and construction activities during use by pregnant females and goes into the start of the pupping season (officially starts December 15th). Therefore, it does not avoid sensitive life stages. If the project is allowed to continue through the end of December, it could result in premature births and abortions, as well as site abandonment, when the pregnant females are subjected to constant high levels of stress. Any major disruption could be harmful to the pregnant females and their unborn pups (which could also affect the viability of the harbor seal colony at the Children's Pool) (Yochem and Stewart, 1993). An earlier end-date would minimize the risk to pregnant females, give them a chance to rest and prepare for birth, and reduce impacts to the rookery. It is pure speculation to state that the activities will not result in the alteration of reproductive behaviors or have any impact on site selection or birthing, particularly since the demolition and construction noise will continue into the late stages of pregnancy. The potential for threatening the viability of the pregnancy are definitely present during this period of demolition and construction. Therefore, the level of incidental harassment should be elevated to Level A harassment.

Response: NMFS included the date of December 31st in the proposed IHA, but we have since changed that date and required that the City of San Diego to cease planned demolition and construction activities for the Children's Pool Lifeguard Station by December 15, 2013. No demolition and construction activities will occur from December 15th to June 1st. This should provide more protection for the pregnant and nursing harbor seals in case they give birth before January 1st.

Harbor seals breed shortly after weaning their pups. Delayed implantation of the fertilized blastocyst occurs 1.5 to 3 months following breeding. The gestation period is approximately 9 months. The first full-term harbor seal pups are usually born at Children's Pool in January. Pups typically wean from their mothers in 4 to 7 weeks. The last pups of the season may not wean until the end of May (Wilkin, 2004). NMFS has received documented reports of aborted harbor seal pups at Children's Pool. One potential cause of abortion or premature parturition is elevated maternal stress of pregnant harbor seal females, and this cannot be ruled out. However, other causes, such as infection disease or genetic conditions, cannot be ruled out either. Increased stress of pregnant harbor seals could potentially result in abortions or premature parturition (Wilkin, 2004). Dr. Hanan (2005) states that "it is normal for there to be some premature harbor seal pup births and pup abandonment. There are many possible reasons for these occurrences. For example, a female may reject a pup if something is biologically wrong with the pup." Based on his extensive experience, interactions with humans are not likely to be a significant cause of harbor seal pup abandonment.

In 2006, the pupping season was considered by the City of San Diego to be from January 1st to May 1st. In 2007, it was extended to December 15th to May 15th to provide more protection for the pregnant and nursing harbor seals. The docent program at the Children's Pool has observed and reported some premature births in mid-December; however, none of the four scientific papers written on the Children's Pool have observed births in December. In comparison to the City of San Diego's originally proposed demolition and construction schedule, the activities were changed to start in early to mid-June 2013, with all of the heavy demolition and construction activities to be completed by November 1, 2013. The revised timing avoids the heaviest portion of the demolition and construction during November and

December. There are 8 days in November and 2 days in December scheduled for sound to exceed 100 dB at the source (not to exceed 90 dB at the haul-out area closest to the demolition and construction activities). These activities are related to hardscape and landscaping activities, finish work, and demobilization of construction equipment. These activities should pose little, if any, potential impacts that would be considered Level B harassment to harbor seals at the Children's Pool.

The MMPA defines Level A harassment as "any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild." As described in detail in the **Federal Register** notice for the proposed IHA (78 FR 25957, May 3, 2013), as well as in this document, NMFS does not believe that the City of San Diego's demolition and construction activities would cause injury, serious injury, or mortality to marine mammals, nor are those authorized under the IHA. The required monitoring and mitigation measures that the City of San Diego would implement during the demolition and construction activities would further reduce the adverse effects on marine mammals to the lowest levels practicable. NMFS anticipates only behavioral disturbance to occur during the conduct of the demolition and construction activities at the Children's Pool Lifeguard Station.

Comment 5: WAN and several individuals state that access to the Children's Pool beach must be closed to the public as direct harassment occurs on a regular basis. NMFS must require the City of San Diego to close Casa Beach during the demolition and construction of the lifeguard station and maintain the closure for 60 to 90 days after completion of the project, for public safety reasons for humans and to protect harbor seals from possible adverse impacts from the noise, equipment, and workers. The City of San Diego can close the beach as part of the Coastal Development Permit (CDP) for the demolition and construction without having to obtain California Coastal Commission approval by barricading the stairs. The stairs are under the City of San Diego's jurisdiction and the CDP for the demolition and construction is under the City of San Diego and was never appealed to the California Coastal Commission. This is highly feasible and should be required.

Although the IHA requires monitoring and recording the impact of the demolition and construction activities on the harbor seals, that is not possible as long as humans are present at the beach, since there is no way to distinguish between the impacts of the demolition and construction activities and the impacts from human presence. Human presence, which continually causes large flushes and harassment of these harbor seals, will continue to be allowed and the monitoring does not even bother to record the presence of people on the beach. The contention that these harbor seals are habituated to the presence of humans and therefore will not be impacted by the sound of demolition and construction activities is not accurate. These harbor seals react to both human disturbance and sound, and in particular are not habituated at all to the demolition and construction noise. There is no attempt made to provide a mechanism to distinguish these two separate impacts. Monitoring without the presence of the public will allow for a more accurate determination as to what the short-term and long-term impacts of the demolition and construction activities may have on harbor seals in the action area.

Response: Closing the beach during the demolition and construction activities as well as for 60 to 90 days after the completion of the project would require a permit from the California Coastal Commission and is not feasible at this time. It is also not within NMFS's jurisdiction. There are signs posted at the Children's Pool warning that harassment of marine mammals is against the law, although no such signage is required by law. NMFS has posted a sign at the Children's Pool that states "Warning! Marine mammals are protected by Federal laws. Please! Do NOT disturb marine mammals. Observe them from a safe distance and keep pets on a leash. Marine mammals are wild animals and can be dangerous! It is against the law to feed, harass, hunt, capture, or kill marine mammals. This includes any act of pursuit, torment, or annoyance that has the potential to injure or disturb a marine mammal. Violators are subject to civil and criminal penalties under the Marine Mammal Protection Act. Report violations to the NMFS Enforcement Hotline: 1–800–853–1964."

While the City of San Diego and NMFS agree that harbor seals often alert or flush for minor, as well as, significant stimulus including sound and visual cues, we believe that required NMFS-approved Protected Species Observers (PSOs) will be able to differentiate between demolition and construction-related disturbances versus those from the presence of the public that are unrelated to the demolition and construction disturbances. The benefit of monitoring by PSOs will be to distinguish, document and provide insight on impacts from the presence of humans and/or the demolition and construction activities. Dr. Hanan, the lead PSO, has substantial experience observing pinniped behavior (he first started observing harbor seals in this area in 1979 and has spent significant time observing seals along the U.S. west coast and offshore islands during the last 34 years) and the data collected will hopefully allow the City of San Diego to be able to identify these causes, especially for flushing and other behavioral responses in nearly all cases. When observing harbor seals, sometimes there are alerts and "flushings" for no apparent reason, which is all the more reason to have PSO's on-site documenting harbor seal behavior, human presence, and demolition and construction activities for comparison to previous observations at this site and other sites with harbor seals that are away from the Children's Pool. NMFS and the City of San Diego do not see the need to close the stairs and beach to the public in order to improve monitoring.

Comment 6: WAN and several individuals recommend providing adequate sound mitigation to reduce the in-air sound levels and protect the harbor seals hearing from the in-air noise generated by the demolition and construction activities. There is no attempt to reduce the sound levels. This is critical since harbor seals orient by sound as well as visual cues, both on land and in the water. Above 90 dB, harbor seals hearing can be permanently impaired. The IHA takes the position that because many of the harbor seals in La Jolla are acclimated to humans watching them from distances of 15.2 m (50 ft) or sometimes less, that the harbor seal colony will therefore be unaffected by noise levels of 90 to 110 dB. There is no scientific basis to support this assertion.

The project intends to create a visible barrier with a plywood wall and then claims this will also serve as an acoustic barrier. This is not the case, as visual barriers are not necessarily acoustic barriers. Here only one layer of plywood is planned and that will have no impact on the sound levels, there is no evidence that a single layer of plywood has any acoustic deadening properties at all. The City of San Diego should erect a temporary sound barrier wall which would consist of a sound blanket or two layers of plywood with acoustic deadening material between them (which should be at least as wide as it is tall). Other methods to reduce noise include sound walls, mufflers, and

sound blankets on all noise-generating equipment. None of these devices are being used, and such an acoustic wall is feasible and should be required. As such, the IHA fails to use the best available technology to reduce the noise impacts on the harbor seals resulting in unnecessary Level B harassment.

Sound could also be mitigated further by moving heavy noise-generating machinery to the far south side of the site so that in-air sound levels are lower; transferring debris to the dump trucks at the street level rather than the trucks picking up the material at sand level; removing the old tower from the street piece-by-piece and not from the beach; as well as pre-fabricating the new lifeguard tower and other preparation of materials offsite to decrease on-site demolition and construction noise and shorten on-site construction time.

Response: In the City of San Diego's IHA application, they showed that the highest in-air sounds generated by the demolition and construction activities (approximately 110 dB) will dissipate to 90 dB or lower from the closest point of the building site to the harbor seal haul-out area, which is located approximately 10 m away. Therefore, additional sound barriers and mufflers are not necessary as the sound will not expose harbor seals to 90 dB or higher, which is lower than the NMFS's threshold for in-air sound for Level B harassment for harbor seals. NMFS has not established a threshold for in-air sound for Level A harassment (injury) for harbor seals and does not anticipate it to occur during the City of San Diego's demolition and construction activities.

The City of San Diego will require the contractor conducting the demolition and construction activities to keep the loudest sound as far away as possible from the Children's Pool beach. There will be no trucks on the beach, although there is a need for the bobcat loader to pick up material directly below the existing building. Every effort will be made to keep sound levels as low as possible near the Children's Pool beach and on the top level above the beach.

Comment 7: An individual states that harbor seals use the Children's Pool beach differently at different times of the year. Detailed knowledge of the behavior of seals using this haul-out site and rookery would indicate that lifeguard tower demolition and construction activities should take place during daylight between the hours of 9 a.m. and 5 p.m. when most, if not all of the harbor seals, have departed the beach to avoid the hottest part of the day.

Response: NMFS disagrees with the individuals recommendations for the dates and times that the demolition and construction activities should take place. To the maximum extent practicable, the demolition and construction activities will be conducted from approximately 8:30 a.m. to 3:30 p.m. (i.e., daylight hours), during the daily period of lowest haul-out occurrence; however, demolition and construction activities may be extended 7 a.m. to 7 p.m. to help assure that the project is completed during the 2013 demolition and construction window. Harbor seals typically have the highest daily or hourly haul-out period during the afternoon from 3 p.m. to 6 p.m.

Comment 8: WAN and several individuals state that the proposed IHA improperly characterizes the La Jolla stock of Pacific harbor seals as habituated to human disturbance (e.g., human presence and associated loud noises) and can therefore tolerate additional disturbance. In their comments they present studies and video monitoring reports that support their assessments that the harbor seals have not been exposed to unfamiliar noise from demolition and construction equipment and will experience acoustic as well as visual disturbance from these activities. They further state that there are very few scientific studies regarding the effects of in-air sound on these pinnipeds, and that most studies are on the effects of in-water sound (see WAN's full public comments online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*). They also expressed concern that the demolition and construction activities would lead to physiological responses to the additional stimuli (see Lindy Weilgart's response on habituation and tolerance in WAN's comments). The proposed activity could have the potential to displace the harbor seals from this breeding area and the applicant has not provided any credible scientific evidence to the contrary. Video evidence has shown that pregnant or sick harbor seals may not respond to direct harassment, but this does not mean that they are habituated to the extent claimed in the proposed IHA.

WAN has documented human-caused disturbance at the Children's Pool site using monitoring information from a continuously-operated surveillance camera. They have indicated that there is a significant difference between the numbers of harbor seals on the beach with and without human presence (see Table 1 of WAN's comments). In recent months during the later winter and spring period, they have documented numerous flushing incidents due to the presence of human, especially when they are on the ocean-side of the rope. WAN anticipates that the number of flushing incidents will rise during the summer as well as on weekends. Video of one of the human-caused disturbance events can be found online at: *http://www.youtube.com/watch?v=UWH3z2iP1Ms&feature=youtu.be*. More information on these incidents can be found in WAN's comments. Also, WAN states that the demolition and construction noise can be expected to dramatically increase the impacts of humans on the harbor seals and may be sufficient cause them to abandon the site. They cite several incidents in March and April 2013 where harbor seals left the beach in response to levels of unrecorded noise that are presumed to be lower than those expected to be generated by the demolition and construction activities. Video of one of these disturbance events can be found online at: *http://www.youtube.com/watch?v=VRQyn6IOUxY*.

In summary, these harbor seals are not habituated to the point that they would be expected to ignore additional human disturbance and there is no scientific analysis of the added impact to them of this additional human activity, particularly to an entirely new type of disturbance. The planned demolition and construction activities will exceed any past experience and may lead to adverse effects on this population.

Response: Generally, harbor seals are considered skittish and have the tendency to react or flush into the water at low levels of sound and/or movements. While a range of behavioral responses can be expected, it is difficult to predict what activities might cause noticeable behavioral reactions with Pacific harbor seals at this site. Children's Pool is a highly disturbed haul-out site and rookery, and the harbor seals observed at this location are unusually tolerant to the presence of humans, and do not respond in the same manner when exposed to stimuli (e.g., laughing, clapping, stomping, climbing, snorkeling, swimming, and wading) when compared to the behavior of other harbor seals in other areas (Hanan & Associates, 2004, 2011; Hanan, 2005).

Due to this uncertainty about how the harbor seals will behaviorally react to in-air sounds and visual cues from the demolition and construction activities, the City of San Diego has established a monitoring program to document responses and possible impacts. Dr. Hanan, the lead PSO, has been observing harbor seals at or near Children's Pool and along the west coast of the U.S. since 1979. Based on his experience and expertise (court approved on harbor seals at Children's

Pool; *Valorie O'Sullivan* v. *City of San Diego,* 2005), he believes that when the harbor seals are in attendance at the Children's Pool, they display remarkable tolerance and are acclimated to human presence and anthropological sounds (Hanan, 2004; Hanan, 2011). Based on previous monitoring and observations, these "urbanized" animals still alert and flush, but much less than "non-urbanized" harbor seals at other sites and especially remote sites. Larger, older harbor seals seem less likely to alert and flush than younger harbor seals, which are more active when on land, moving into and out of the water continuously. Regarding the issue of potential abandonment, please see the response to comment 15 (below) in this document.

Comment 9: Several individuals state that the proposed IHA does not specify what timeframe the harbor seals are to be monitored prior to the beginning the demolition and construction activities to assess "normal reactions" often found at the beach. Such monitoring should begin weeks before the demolition and construction starts. In addition, the City of San Diego should obtain monitoring from WAN to determine a baseline for the presence of harbor seals and their distribution to analyze impacts from the demolition and construction activities.

Response: The City of San Diego began visual and acoustic monitoring for the demolition and construction activities in early June to establish baseline information on the presence and distribution of harbor seals and ambient sound levels at the site. To date, Dr. Hanan and other PSOs have been onsite monitoring on June 3, 5, 6, 12, and 13, 2012. Most days and nights they have also been monitoring the Children's Pool beach using the WAN webcam.

Comment 10: WAN and several individuals recommend requiring monitoring to continue for 60 to 90 days after the completion of demolition and construction activities to determine whether there is any long-term displacement from the breeding and resting area. There should be monitoring for at least 60 days after the demolition and construction activities cease to be certain that the same number of harbor seals frequent the beach, as did prior to the start of the demolition and construction activities. NMFS fails to require post-project monitoring for a reasonable period of time to determine if the proposed activities have caused displacement from the area and abandonment of the site as a rookery. The basis for this is that "no funds were included for this purpose." The lack of funding does not justify omission of a determination as to what the impacts of the project are. The only way to determine if abandonment has occurred or if there has been any long-term impact (e.g., a reduction in numbers) is to require a 60-day post-project monitoring period and then a requirement to put in place a recovery plan, to help re-establish the colony should it turn out that the projected lack of impact proves false.

Response: The City of San Diego has modified the monitoring program and it will extend for 60 days following the end of the demolition and construction activities. The City of San Diego will have a program where PSOs that will randomly select a day per week to visit the Children's Pool. The monitoring data collected at the Children's Pool site will be integrated with 10 randomly selected 30 minute monitoring periods using the WAN webcam on three non-observed days via their computers. NMFS has included this as a requirement in the IHA. A re-establishment or recovery plan has not been developed because the City of San Diego and NMFS thinks that abandonment by the harbor seals at the Children's Pool site is highly unlikely.

Comment 11: WAN and several individuals state that the monitoring plan should include observations of the numbers of people on the beach, their location relative to the harbor seals, and any impacts of their presence at the time of counting the harbor seals on the beach: The presence of the public is a major factor affecting the behavior of the harbor seals and a determination should be made as to whether or not the harassment is attributable to the presence of the public or to the demolition and construction activities. Recording this data is necessary in order to understand the influence of people on harassment. The noise caused by the presence of humans or the noise caused by demolition and construction activities may be additive, synergistic, or multiplicative, magnifying the effects of the human disturbance.

Response: NMFS has included a requirement to this effect in the IHA issued to the City of San Diego.

Comment 12: WAN states that the monitoring proposed is to start 30 minutes prior to demolition and construction activities and at least 30 minutes after cessation of the in-air noise-generating activity. The monitoring should be conducted at all times (24 hours/7days per week) or at least one hour prior to sunrise and one hour after sunset, in order to know what impact the demolition and construction may or may not have on the harbor seals since humans are also present then. The WAM webcam can monitor the Children's Pool beach 24 hours/7 days per week and can monitor the number of pinnipeds accessing the beach before, during, and after the demolition and construction activities. WAN is willing to work with the City of San Diego to employ the technical advantage of the surveillance camera during the project. WAN has obtained data on harassment, haul-out patterns, presence of humans on the beach (both behind and in front of the rope), weather, etc. WAN states that there is considerable baseline data available that is not being used. The number of harbor seals can vary widely depending on a number of factors, weather, tides, and presence of humans. Three to five days is an insufficient amount of time to get any statistically meaningful baseline data. Since February 2013, monitoring reports have been recorded every hour during the day from 6 a.m. to 2 a.m. the next morning. This baseline data is backed-up by video recording of the entire day (24 hours/7days per week). This extensive data should be reviewed and analyzed for use in determining an accurate baseline, particularly as it relates to haul-out patterns. To understand a complex situation it is necessary to reduce as many variables as possible.

Response: NMFS regulations suggest means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects. NMFS has encouraged the City of San Diego to work with WAN to review and analyze any available data to determine baseline information as well as evaluate the impacts from the demolition and construction activities on the pinnipeds at the Children's Pool. The City of San Diego informed NMFS it is open to working with the WAN's La Jolla Harbor Seal Webcam, which can be found online at: *http://www.wanconservancy.org/la_jolla_harbor_seal_earthcam.htm.* The City of San Diego may do periodic checks using the webcam for monitoring purposes. The camera is not expected to replace NMFS-qualified PSOs at the site making accurate counts, measuring sound levels and observing the public and the construction, as well as the seals. In the camera view, you may be able to see visual evidence of Level B harassment, but it probably would not be able to be distinguished between harassment from demolition and construction activities and the public since the camera has a limited scope and only shows the Children's Pool beach and pinnipeds (usually a specific

portion of the beach, but not the reef nor nearby beaches).

Comment 13: WAN asks why have no studies been done to determine the extent of the current background noise? Even if such studies show background noise is elevated, the sound levels come in major part from the ocean itself and from traffic noise above. The demolition and construction noise will be in addition to the existing sound sources, will be additive, and will be totally different in sound level and frequency.

Response: The City of San Diego will conduct acoustic monitoring by PSOs using hand-held digital sound level meters. The acoustic monitoring will be conducted at the beach of the haul-out site as well as at surrounding areas of the Children's Pool. The acoustic monitoring will be conducted before, during, and after demolition and construction activities to gather baseline data on background (i.e., ambient) sound levels as well as validate predicted sound levels from the equipment being used.

Comment 14: An individual states that it is very important that these PSOs must be honest and objective, and not volunteers from any animal extremist group. Dr. Hanan, as the lead PSO, is obligated to report on all observable reactions. Currently there are independent monitors from the animal activist groups at the Children's Pool. They may have had good attentions, but members of these organizations are biased and not objective, and any comments and information must be carefully reviewed for accuracy as to not wrongly influence decision makers.

The SDCOD have objection to some of the oversight of monitoring data gathered on the effects of the activities on harbor seals. The SDCOD requests the Commission take direct oversight and ensure that the research is solely in control of Dr. Hanan without conditions or personnel imposed as well as to provide oversight to prevent the degradation of science and law, to provide impartial oversight and a more neutral body. The personnel choices and monitoring data should not be under the control of an agency directly involved in secondary purposes as there is motive to skew data. The Commission needs to ensure any IHA is administered so the MMPA works per intent with undistorted science behind it. This needs to be a condition of the IHA being issued by NMFS.

Response: Dr. Hanan, an independent biologist, will be the lead PSO for the mitigation and monitoring program required by the IHA. NMFS-qualified PSO resumes and curriculum vitaes are reviewed and approved by NMFS on a project-by-project basis. NMFS is the Federal agency charged with issuing the IHA under the MMPA to the City of San Diego and requiring the mitigation, monitoring, and reporting measures. The Commission is an independent agency of the U.S. government, established under Title II of the MMPA to provide independent oversight of the marine mammal conservation policies and programs being carried out by Federal regulatory agencies. A description of the seven duties the Commission is charged with as well as other responsibilities can be found online at: *http://www.mmc.gov/about/welcome.shtml#missions*. NMFS forwarded copies of the IHA application and notice of proposed IHA (78 FR 25958, May 3, 2013) to the Commission and its Committee of Scientific Advisors, and the Commission provided a letter to NMFS on May 21, 2013. The Commission recommends that NMFS issue the IHA, subject to inclusion of the proposed mitigation and monitoring measures (see above in this document).

Comment 15: WAN and several individuals state that using 12,783 takes over the entire project period equates to 1,826 takes per month. If after at least a month of monitoring the average actual take exceeds the predicted number of authorized takes by 25% or results in adverse impacts to the colony, the demolition and construction activities should be shut-down and the City of San Diego required to work with NMFS to develop and implement a revised mitigation plan to reduce the further reduce the number of takes and impacts to the expected level.

The harbor seals do not have any safe places to go if the demolition and construction activities cause their abandonment. Given anthropogenic impacts to the ocean or other unexpected catastrophic events, this fragment of a colony might well be a saving remnant if something were to happen to the waters off the other large harbor seal colonies of the Channel Islands, Point Mugu or Carpenteria. If it is determined that harbor seals have not returned to the Children's Pool beach in their pre-project numbers or have abandoned the site, the City of San Diego should work with NMFS to develop a program designed to re-establish the colony at the site.

Response: Harbor seals observed at the Children's Pool site already use nearby haul-out sites at Point Loma and Torrey Pines State Beach (at night) in low numbers. Point Mugu, Carpenteria, Goleta, and Point Conception are mainland haul-out sites that are used by large numbers of harbor seals in the region. These harbor seals may also travel to offshore areas such as the Channel Islands (Steward and Yochem, 1994; Hanan, 1996; Hanan & Associates, 2011).

The City of San Diego will be monitoring the harbor seals reactions to noise levels, demolition and construction practices, machinery placement, and workers in the study. See the "Monitoring and Reporting" section of this document for more information on the City of San Diego's monitoring plan. If monthly monitoring results in observations of impacts greater than anticipated, NMFS will work with the City of San Diego to develop and implement additional monitoring and mitigation measures to further reduce potential impacts from the demolition and construction activities. If the City of San Diego exceeds their authorized take in the IHA for demolition and construction activities at the Children's Pool Lifeguard Station, they will re-initiate consultation under the MMPA with NMFS.

After the first two months of monitoring during demolition and construction activities, the City of San Diego will take the mean number of observed harbor seals at the Children's Pool in a 24-hour period across that two months and compare it to the mean of the lower 95 percent confidence interval in Figure 1 (see below). If the observed mean is lower, the City of San Diego will shut-down demolition and construction activities and work with NMFS and other harbor seal experts (e.g., Mark Lowry, Dr. Sarah Allen, Dr. Pamela Yochem, and/or Dr. Brent Stewart) to develop and implement a revised mitigation plan to further reduce the number of takes and potential impacts. Once a week every week thereafter, the City of San Diego will take the same mean of observed harbor seals across the previous three tide cycles (a tide cycle is approximately 2 weeks) and compare it to the 95% lower confidence interval in Figure 1 for the same time period. If the observed mean is lower, the City of San Diego will shut-down and take the action described above. If abandonment of the site is likely, monitoring will be expanded away from the Children's Pool to determine if animals have been temporarily displaced to haul-out sites in the southern California area (e.g., Torrey Pines, Point Loma, etc.). A re-establishment or recovery plan has not been developed because the City of San Diego and NMFS think that abandonment by the harbor seals at the Children's Pool site is highly unlikely.

Comment 16: WAN states that the duration of the demolition and

construction activities are not short; it is planned for five days per week, each and every week for seven months. There should be a follow-up study and report submitted at least 60 days after cessation of all activities to determine whether or not any long-term or permanent impacts have occurred.

Response: All monitoring data collected before, during, and after demolition and construction activities will be included in the biological monitoring notes to be submitted. The City of San Diego would notify NMFS Headquarters and the NMFS Southwest Regional Office prior to initiation of the demolition and construction activities. A draft final report must be submitted to NMFS within 90 days after the conclusion of the demolition and construction activities of the Children's Pool Lifeguard Station. The report would include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of operations, and all marine mammal sightings (dates, times, locations, species, behavioral observations [activity, group cohesiveness, direction and speed of travel, etc.], tidal stage, weather conditions, Beaufort sea state and wind force, activities, associated demolition and construction activities). A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

Comment 17: WAN states that if there were serious injury or injury, an immediate report should also be made to Sea World's stranding program so that Sea World might make an attempt at rescuing the injured animal for possible rehabilitation.

Response: Contacting Sea World's stranded animal hotline (1–800–541–7325) is the standard operating procedure for live stranded animals (sick and injured) at Children's Pool. Sea World should also be notified for dead stranded pinnipeds so that a necropsy can be performed. NMFS should be notified as well, but for immediate response purposes Sea World should be contacted first. Dead stranded cetaceans should be reported to NMFS Southwest Fisheries Science Center at 858–546–7162. NMFS has included this as a reporting requirement in the IHA.

Comment 18: An individual states that given these are wild animals, putting out maximum effort to find their own food supply and maintain their own health, the duration of the project is very likely to outstrip the animal's reserves—stress, lack of adequate haul-out time to rest, re-oxygenate, keep up their internal warmth and build up their strength, necessary every day. The colony only consists of around 250 harbor seals, the expected number of "takings" could very well cause desertion of the site and a high rate of mortality. Thus, recommend a change to the IHA to include Level A harassment, as it is a more realistic type of "take."

Response: The MMPA defines Level A harassment as "any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild." As described in detail in the **Federal Register** notice for the proposed IHA (78 FR 25957, May 3, 2013), as well as in this document, NMFS does not believe that the City of San Diego's demolition and construction activities would cause injury, serious injury, or mortality to marine mammals, nor are those authorized under the IHA. The required monitoring and mitigation measures that the City of San Diego would implement during the demolition and construction activities would further reduce the adverse effects on marine mammals to the lowest levels practicable. NMFS anticipates only behavioral disturbance to occur during the conduct of the demolition and construction activities at the Children's Pool Lifeguard Station.

Comment 19: WAN and an individual state that NMFS fails to analyze that there may be possible long-term impacts on the harbor seal population from increased visitors and noise at the new facilities. The new facilities could increase the number of visitors to the beach. In particular, the new facilities will have bathrooms at the beach level (current facilities are at the street level). Since the bathrooms in the new lifeguard tower are at beach level, which is closer to the harbor seals, it would be important to study the long-term impacts on the harbor seals from the increased number of visitors and bathroom use. The IHA should include a study to assess the impact of noise from increased visitors and bathroom. The IHA should not be approved, as it stands, unless these problems are dealt with, as it would not satisfy either Federal requirements under the MMPA or the San Diego City Municipal Code.

Response: NMFS does not believe that the future use of the bathroom on the beach level when the new facilities are completed to be in the scope of this project and IHA request. The City of San Diego has not requested take, by Level B harassment, incidental to the use of the bathroom by visitors at the new lifeguard station, which has yet to be completed, and none has been authorized.

Comment 20: WAN states that NMFS fails to properly characterize this colony of harbor seals as a "population stock," as this population of animals is spatially isolated, hauls-out, breeds, and mates among its members in this area. NMFS references outdated stock assessment reports that were done before the colony at La Jolla was well established and no genetic studies have been conducted. This distinct group of seals should be characterized as a "population stock" that meets the definition in the MMPA as it is a distinct group with distinct behavioral patterns in this particular location at the Children's Pool.

Response: The MMPA defines the term "population stock" or "stock" as a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature. In NMFS's U.S. Pacific marine mammal stock assessments, NMFS considers the Pacific harbor seals that occur at the Children's Pool to be part of the California stock (NMFS, 2011). Although NMFS knows that geographic structure exists along an almost continuous distribution of harbor seals from California to Alaska, stock boundaries are difficult to draw because any rigid line is (to a greater or lesser extent) arbitrary from a biological perspective. An unknown number of harbor seals also occur along the west coast of Baja California, at least as far south as Isla Asuncion, which is about 161 km (100 miles) south of Punta Eugenia. Animals along Baja California are not considered to be part of the California stock because it is not known if there is any demographically significant movement of harbor seals between California and Mexico and there is no international agreement for joint management of harbor seals (NMFS, 2011). Determination of population structure of harbor seals using the area will require further research using a combination of scientific techniques that includes morphological and genetic analysis (Hanan & Associates, 2011).

Comment 21: WAN and other individuals state that the take estimates in the City of San Diego's IHA application do not meet the "small numbers" requirement of the MMPA. NMFS has blatantly disregarded the MMPA's prohibition on allowing the take of more than small numbers of marine mammals. Most egregiously, NMFS estimates that 12,783 takes will occur affecting 100% of the La Jolla population stock. NMFS does not attempt to explain how its take

estimates meet the "small numbers" requirement. The IHA entirely disregards this statutory requirement. NMFS does not attempt to define small numbers, nor does it undertake any sort of analysis of what small numbers might be, thus violating the MMPA. The number of takes should be reduced to a smaller percentage to the population stock as to meet the small numbers requirement of the MMPA.

Response: NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of the City of San Diego conducting demolition and construction activities at the Children's Pool Lifeguard Station, June to December 2013, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of 3 species of marine mammals (see Table 2 below for authorized take numbers and approximate percentage of best population estimate of stock). NMFS has determined that the 12,783 authorized takes (i.e., number of exposures) of approximately up to 600 Pacific harbor seals is a small number, as it is approximately 1.98% of the estimated best population (30,196 animals) in the California stock. The authorized takes of California sea lions and northern elephant seals is less than 0.01 percent of the respective U.S. and California breeding stocks.

Comment 22: WAN and an individual state that the IHA cannot legally be issued under the MMPA, as it does not rely on the best available scientific data regarding the impacts from the noise-generated by demolition and construction activities on marine mammals and have greater than a negligible impact on the stock of Pacific harbor seals, especially since the incidence of "take" on this population is 100%. Throughout the document the IHA fails to provide reference to valid, up-to-date studies to justify many of the conclusions. Studies were either not cited because there are none, or were cited that had no relevance or were so out-dated that they also had no relevance. For the most part, conclusions reached were based on conjecture and not on evidence. For the IHA to meet the requirements of the MMPA, it must be accompanied by accurate and appropriate scientific studies; however, it fails to meet that test.

Response: NMFS and the City of San Diego have used the best available data and science regarding the biology of pinnipeds affected and the propagation of in-air sounds from the equipment used during demolition and construction activities in making the decision on whether or not to issue the IHA to the City of San Diego for the demolition and construction activities at the Children's Pool Lifeguard Station. Regarding exposure of marine mammals to high-level in-air sounds, NMFS has established at or above 90 dB re 20 µPa for harbor seals and at or above 100 dB re 20 µPa for all other pinniped species (i.e., seals and sea lions) as a criterion for potential Level B harassment (Lawson *et al.*, 2002; Southall *et al.*, 2007). NMFS has not established criterion for potential Level A harassment. The required determinations, mitigation and monitoring measures in the IHA are supported by the best available scientific information, which has been available for public review. The IHA has been designed to ensure that the impacts on the affected species or stocks of marine mammals will be negligible and the takings will be at the lower level practicable.

Generally, under the MMPA, NMFS shall authorize the harassment of small numbers of marine mammals incidental to an otherwise lawful activity, provided NMFS finds that the taking will have a negligible impact on the species or stock, will not have an unmitigable adverse impact on the availability of the species or stock 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 to achieve the least practicable adverse impact. 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." NMFS believes that the time period of the demolition and construction activities, the small footprint of in-air sound, the requirement to implement mitigation measures, and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the activity to the degree that it will have a negligible impact on the species or stocks in the action area. The City of San Diego has applied for an IHA and has met the necessary requirements for issuance of an IHA for small numbers of marine mammals, by Level B harassment, incidental to the demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California. Therefore, NMFS has issued an IHA to the City of San Diego.

Description of Marine Mammals in the Specified Geographic Area of the Specified Activity

Three species of pinnipeds are known to or could occur in the Children's Pool action area and off the Pacific coastline (see Table 1 below). Pacific harbor seals, California sea lions, and northern elephant seals are the three species of marine mammals that occur and are likely to be found within the activity area; thus, they are likely to be exposed to effects of the specified activities. NMFS and the City of San Diego do not expect incidental take of other marine mammal species. A variety of other marine mammals have on occasion been reported from the coastal waters of southern California. These include gray whales, killer whales, bottlenose dolphins, Steller sea lions, northern fur seals, and Guadalupe fur seals. However, none of these species have been reported to occur in the action area. Table 1 below outlines the cetacean and pinnipeds species, their habitat, and conservation status in the nearshore area of the general region of the project area.

TABLE 1—THE HABITAT, ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE GENERAL REGION OF THE ACTION AREA IN THE PACIFIC OCEAN OFF THE SOUTHERN COAST OF CALIFORNIA

Species	Habitat	Best population estimate (minimum) [1]	ESA [2]	MMPA [3]	Population trend
Mysticetes					
Gray whale (*Eschrichtius robustus*).	Coastal and shelf	19,126 (18,107)	DL—Eastern Pacific stock; EN—Western Pacific stock.	NC—Eastern Pacific stock; D—Western Pacific stock.	Increasing over past several decades.

TABLE 1—THE HABITAT, ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE GENERAL REGION OF THE ACTION AREA IN THE PACIFIC OCEAN OFF THE SOUTHERN COAST OF CALIFORNIA—Continued

Species	Habitat	Best population estimate (minimum) [1]	ESA [2]	MMPA [3]	Population trend
Odontocetes					
Killer whale (*Orcinus orca*)	Widely distributed	354 (354)—West Coast Transient stock.	NL; EN—Southern resident population.	NC; D—Southern Resident and AT1 Transient populations.	Increasing—West Coast Transient stock.
Bottlenose dolphin (*Tursiops truncatus*).	Offshore, inshore, coastal, estuaries.	323 (290)—California Coastal stock.	NL	NC	Stable.
Long-beaked common dolphin (*Delphinus capensis*).	Inshore	107,016 (76,224)—California stock.	NL	NC	Increasing.
Pinnipeds					
Pacific harbor seal (*Phoca vitulina richardii*).	Coastal	30,196 (26,667)—California stock.	NL	NC	Increased in California 1981 to 2004.
Northern elephant seal (*Mirounga angustirostris*).	Coastal, pelagic when not migrating.	124,000 (74,913)—California breeding stock.	NL	NC	Increasing through 2005, now stable.
California sea lion (*Zalophus californianus*).	Coastal, shelf	296,750 (153,337)—U.S. stock.	NL	NC	Increasing.
Steller sea lion (*Eumetopias jubatus*).	Coastal, shelf	72,223 (58,334)—Eastern U.S. stock.	T—Eastern U.S. stock; EN—Western U.S. stock.	D	Overall increasing, decreasing in California.
Northern fur seal (*Callorhinus ursinus*).	Pelagic, offshore	9,968 (5,395)—San Miguel Island stock.	NL	NC—San Miguel Island stock.	Increasing.
Guadalupe fur seal (*Arctocephalus townsendi*).	Coastal, shelf	7,408 (3,028)—Mexico to California.	T	D	Increasing.

NA = Not available or not assessed.
[1] NMFS Marine Mammal Stock Assessment Reports.
[2] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, and NL = Not listed.
[3] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, and NC = Not classified.

The rocks and beaches at or near the Children's Pool in La Jolla, California, are almost exclusively Pacific harbor seal hauling-out sites. On infrequent occasions, one or two California sea lions or a single juvenile northern elephant seal, have been observed on the sand or rocks at or near the Children's Pool (i.e., breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area). These sites are not usual haul-out locations for California sea lions and/or northern elephant seals. The City of San Diego commissioned two studies of harbor seal abundance trends at the Children's Pool. Both studies reported that appearances of California sea lions and northern elephant seals are infrequent, but not rare at Children's Pool (Yochem and Stewart, 1998; Hanan & Associates, 2004).

Pacific Harbor Seal

Harbor seals are widely distributed in the North Atlantic and North Pacific. Two subspecies exist in the Pacific Ocean: *P. v. stejnegeri* in the western North Pacific near Japan, and *P. v. richardii* in the eastern North Pacific. The subspecies in the eastern North Pacific Ocean inhabits near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. These seals do not make extensive pelagic migrations, but do travel 300 to 500 kilometers (km) (162 to 270 nautical miles [nmi]) on occasion to find food or suitable breeding areas (Herder, 1986; Harvey and Goley, 2011). Previous assessments of the status of harbor seals have recognized three stocks along the west coast of the continental U.S.: (1) California, (2) Oregon and Washington outer coast waters, and (3) inland waters of Washington. An unknown number of harbor seals also occur along the west coast of Baja California, at least as far south as Isla Asuncion, which is about 100 miles south of Punta Eugenia. Animals along Baja California are not considered to be a part of the California stock because it is not known if there is any demographically significant movement of harbor seals between California and Mexico and there is no international agreement for joint management of harbor seals. In California, approximately 400 to 600 harbor seal haul-out sites are distributed along the mainland coast and on offshore islands, including intertidal sandbars and ledges, rocky shores and islets, and beaches (Harvey *et al.*, 1995; Hanan, 1996; Lowry *et al.*, 2008). Of these haul-out sites, only 14 locations are rookeries (2 locations have multiple sites, for a total of 17 sites) on or near the mainland of California. Preferred haul-out sites are those that are protected from the wind and waves, and allow access to deep water for foraging (Perrin *et al.*, 2008). Harbor seals are one of the most common and frequently observed marine mammals along the coastal environment.

The population of harbor seals has grown off the U.S. west coast and has led to new haul-out sites being used in California (Hanan, 1996). Pacific harbor seals haul-out year-round on nearby beaches and rocks (i.e., breakwater ledge/rocks haul-out area, reef haul-out

area, and Casa Beach haul-out area) below the lifeguard tower at Children's Pool. According to Yochem (2005), the Children's Pool beach site is used by harbor seals at all hours of the day and at all tides with the exception of occasional high tide/high swell events in which the entire beach is awash. Harbor seals have been observed hauling-out and documented giving birth at the Children's Pool since the 1990's (Yochem and Stewart, 1998; Hanan & Associates, 2004). It is the only rookery in San Diego County and the only mainland rookery on the U.S. west coast between the border of Mexico and Point Mugu in Ventura County, California (321.9 km [200 miles]). Also, it is one of the three known haul-out sites for this species in San Diego County. They haul-out, give birth to pups, nurse, and molt their pelage on the beach and often forage for food in nearby areas. Harbor seal numbers have increased since 1979 and seals are documented to give birth on these beaches during December through May (Hanan, 2004; 2011). The official start to pupping season is December 15th. Females in an advanced stage of pregnancy begin to show up on the Children's Pool beach by late October to early November. Several studies have identified harbor seal behavior and estimated harbor seal numbers including patterns of daily and seasonal area use (Yochem and Stewart, 1998; Hanan & Associates, 2004, 2011; Linder, 2011). Males, females, and pups (in season) of all ages and stages of development are observed at the Children's Pool and adjacent areas.

In southern California, a considerable amount of information is known about the movements and ecology of harbor seals, but population structure in the region is not as well known (Stewart and Yochem, 1994, 2000; Keper *et al.*, 2005; Hanan & Associates, 2011). Linder (2011) suggests that this population moves along the California coast and the beach at Children's Pool is part of a "regional network of interconnected" haul-out and pupping sites. Harbor seals often haul-out in protected bays, inlets, and beaches (Reeves *et al.*, 1992). At and near the Children's Pool, harbor seals haul-out on the sand, rocks, and breakwater base in numbers of 0 to 15 harbor seals to a maximum of about 150 to 200 harbor seals depending on the time of day, season, and weather conditions (Hanan & Associates, 2004, 2011; Linder, 2011). Based on monitoring from a camera, WAN reports that during the month of May 2013, at any given time, up to 302 harbor seals were documented resting on the Children's Pool beach with additional harbor seals on the rocks and in the water (Wan, personal communication). Almost every day, except for weekends, the number of harbor seals on the beach was over 250 individuals. During the months of September 2012 to January 2013, the average number of harbor seals on the beach during hours prior to people on the beach or with people behind the rope varied from 83 to 120 animals. During this same period when there were people on the beach with or without the rope, but where people were across the rope, the average varied between 7 to 27, which is significantly less. The weather (i.e., wind and/or rain) as well as the proximity of humans to the beach likely affect the presence of harbor seals on the beach. These animals have been observed in this area moving to/from the Children's Pool, exchanging with the rocky reef directly west of and adjacent to the breakwater and with Seal Rock, which is about 150 m (492 ft) west of the Children's Pool. Harbor seals have also been reported on the sandy beach just southwest of the Children's Pool. At low tide, additional space for hauling-out is available on the rocky reef areas outside the retaining wall and on beaches immediately southward. Haul-out times vary by time of year, from less than an hour to many hours. There have been no foraging studies at this site, but harbor seals have been observed in nearshore waters and kelp beds nearby, including La Jolla Cove.

Radio-tagging and photographic studies have revealed that only a portion of seals utilizing a hauling-out site are present at any specific moment or day (Hanan, 1996, 2005; Gilbert *et al.*, 2005; Harvey and Goley, 2011; and Linder, 2011). These radio-tagging studies indicate that harbor seals in Santa Barbara County haul-out about 70 to 90% of the days annually (Hanan, 1996), the City of San Diego expects harbor seals to behave similarly at the Children's Pool. Tagged and branded harbor seals from other haul-out sites have been observed by Dr. Hanan at the Children's Pool. Harbor seals have been observed with red-stained heads and coats, which are typical of some harbor seals in San Francisco Bay, indicating that seals tagged at other locations and haul-out sites do visit the Children's Pool. A few seals have been tagged at the Children's Pool and there are no reports of these tagged animals at other sites (probably because of very low re-sighting efforts and a small sample size [10 individuals radio-tagged]), which may indicate a degree of site-fidelity (Yochem and Stewart, 1998). These studies further indicate that seals are constantly moving along the coast including to/from the offshore islands and that there may be as many as 600 individual harbor seals using Children's Pool during a year, but certainly not all at one time.

The City of San Diego has fitted a polynomial curve to the number of expected harbor seals hauling-out at the Children's Pool by month (see Figure 1 of the IHA application and Figure 2 below) based on counts at the Children's Pool by Hanan & Associates (2004, 2011), Yochem and Stewart (1998), and the Children's Pool docents (Hanan & Associates, 2004). A three percent annual growth rate of the population was applied to Yochem and Stewart (1998) counts to normalize them to Hanan & Associates and docent counts in 2003 to 2004.

A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocial, with pups entering the water almost immediately after birth. Population size is estimated by counting the number of seals ashore during the peak haul-out period (May to July) and by multiplying this count by a correction factor equal to the inverse of the estimated fraction of seals on land. Based on the most recent harbor seal counts (2009) and including a revised correction factor, the estimated population of harbor seals in California is 30,196 individuals (NMFS, 2011), with an estimated minimum population of 26,667 for the California stock of harbor seals. Counts of harbor seals in California increased from 1981 to 2004. The harbor seal is not listed under the ESA and the California stock is not considered depleted or strategic under the MMPA (Carretta *et al.*, 2010).

California Sea Lion

The California sea lion is now considered to be a full species, separated from the Galapagos sea lion (*Zalophus wollebaeki*) and the extinct Japanese sea lion (*Zalophus japonicus*) (Brunner, 2003; Wolf *et al.*, 2007; Schramm *et al.*, 2009). The breeding areas of the California sea lion are on islands located in southern California, western Baja California, and the Gulf of California. Genetic analysis of California sea lions identified five genetically distinct geographic populations: (1) Pacific Temperate, (2) Pacific Subtropical, (3) Southern Gulf of California, (4) Central Gulf of California, and (5) Northern Gulf of California (Schramm *et al.*, 2009). In that study,

the Pacific Temperate population included rookeries within U.S. waters and the Coronados Islands just south of U.S./Mexico border. Animals from the Pacific Temperate population range north into Canadian waters, and movement of animals between U.S. waters and Baja California waters has been documented, though the distance between the major U.S. and Baja California rookeries is at least 740.8 km (400 nmi). Males from western Baja California rookeries may spend most of the year in the U.S.

The entire population cannot be counted because all age and sex classes are never ashore at the same time. In lieu of counting all sea lions, pups are counted during the breeding season (because this is the only age class that is ashore in its entirety), and the numbers 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. Censuses are conducted in July after all pups have been born. There are no rookeries at or near the Children's Pool. Population estimates for the U.S. stock of California sea lions, range from a minimum of 153,337 to an average estimate of 296,750 animals. They are considered to be at carrying capacity of the environment. The California sea lion is not listed under the ESA and the U.S. stock is not considered depleted or strategic under the MMPA.

Northern Elephant Seal

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.*, 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south, south of 45° North (Stewart and Huber, 1993; Le Boeuf *et al.*, 1993). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

Populations of northern elephant seals in the U.S. and Mexico were all originally derived from a few tens or a few hundreds of individuals surviving in Mexico after being nearly hunted to extinction (Stewart *et al.*, 1994). Given the very recent derivation of most rookeries, no genetic differentiation would be expected. Although movement and genetic exchange continues between rookeries when they start breeding (Huber *et al.*, 1991). The California breeding population is now demographically isolated from the Baja California population. The California breeding population is considered in NMFS stock assessment report to be a separate stock.

A complete population count of elephant seals is not possible because all age classes are not ashore at the same time. Elephant seal population size is typically estimated by counting the number of pups produced and multiplying by the inverse of the expected ratio of pups to total animals (McCann, 1985). Based on the estimated 35,549 pups born in California in 2005 and an appropriate multiplier for a rapidly growing population, the California stock was approximately 124,000 in 2005. The minimum population size for northern elephant seals can be estimated very conservatively as 74,913, which is equal to twice the observed pup count (to account for the pups and their mothers), plus 3,815 males and juveniles counted at the Channel Islands and central California sites in 2005 (Lowry, NMFS unpublished data). Based on trends in pup counts, northern elephant seal colonies were continuing to grow in California through 2005, but appear to be stable or slowly decreasing in Mexico (Stewart *et al.*, 1994). Northern elephant seals are not listed under the ESA and are not considered as depleted or a strategic stock under the MMPA.

Further information on the biology and local distribution of these marine mammal species and others in the region can be found in the City of San Diego's application, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/sars/*.

Potential Effects on Marine Mammals

Richardson *et al.* (1995) has documented changes in behavior and auditory threshold shifts in response to in-air and underwater noise. Behavioral responses to loud noises could include startling, alertness, changes in physical movement, temporary flushing from the beach, site abandonment, and pup abandonment (Allen, 1991; Kastak and Schusterman, 1996; Kastak *et al.*, 1999; Hanan & Associates, 2011). NMFS and the City of San Diego anticipate short-term behavioral impacts on pinnipeds at the Children's Pool to include startling, alertness, changes in physical movement, temporary flushing from the beach, and general diminished use of the haul-out site during the demolition and construction activities (Hanan & Associates, 2011).

The City of San Diego requests authorization for Level B harassment of three species of marine mammals (i.e., Pacific harbor seals, California sea lions, and northern elephant seals) incidental to the use of equipment and its propagation of in-air noise from various acoustic mechanisms associated with the demolition and construction activities of the Children's Pool Lifeguard Station at La Jolla, California discussed above. Several species of marine mammals may potentially occur in the specified geographic area and thus may be affected by the action. Pacific harbor seals are the most common species, the California sea lion and northern elephant seal are observed occasionally, and thus considered likely to be exposed to sound associated with the demolition and construction activities. Behavioral disturbance may potentially occur as well incidental to the visual presence of humans and demolition/construction activities; however, pinnipeds at this site have likely adapted or become acclimated to human presence at this site. Large numbers of people come to the site to view the pinnipeds at all hours and they perform many activities that can disturb pinnipeds at other sites, but this often does not occur at Children's Pool as they seem to have acclimated to human presence and associated noises (e.g., nearby vehicles, overhead aircrafts, small boats, audio systems, dogs, human activities on foot, and human vocalizations) (Hanan & Associates, 2004; 2011). These "urbanized" harbor seals do not exhibit sensitivity at a level similar to that noted in harbor seals in some other regions affected by human disturbance (Allen *et al.*, 1984; Suryan and Harvey, 1999; Henry and Hammil, 2001; Johnson and Acevedo-Gutierrez, 2007; Jansen *et al.*, 2006; Hanan & Associates, 2011). Lifeguards at the Children's Pool and nearby areas estimate that an average of 1,556,184 people per year or 129,682 per month visit the site from 2010 to 2012. The vast majority of these visitors have come to the Children's Pool specifically to watch the harbor seals. A maximum of 15 personnel, at any one time, are expected to be part of the demolition and construction activities.

Current NMFS practice, regarding exposure of marine mammals to high-level in-air sounds, as a threshold for potential Level B harassment, is at or above 90 dB re 20 µPa for harbor seals and at or above 100 dB re 20 µPa for all other pinniped species (Lawson *et al.*, 2002; Southall *et al.*, 2007). NMFS does not expect exposure of marine mammals to high-level underwater sounds from

demolition and construction activities that would be considered for potential Level B harassment. The acoustic mechanisms involved entail in-air non-impulsive noise caused by the demolition and construction activities. Expected in-air noise levels are anticipated to result in elevated sound intensities near the demolition and construction activities. No other mechanisms are expected to affect marine mammal use of the area. The other activities, would not affect any haul-out and would not entail noise, and activity surrounding the water materially different from normal operations at the lifeguard station, to which the animals may be somewhat habituated already.

Since no demolition or construction activities will be performed during the pupping and weaning season (i.e., mid-December through mid-May), there will be no impacts on birthing rates or pup survivorship at the Children's Pool. There will be no in-water demolition and construction activities in or near the water so pinniped activities in the water should not be affected. Additionally, pinnipeds utilizing the Children's Pool beach as a haul-out site are a very small portion of the species and/or stock populations and any impacts would have little effect at the species and/or stock population levels.

As noted above, current NMFS practice, regarding exposure of marine mammals to high-level in-air sounds, as a potential threshold for Level B harassment, is at or above 90 dB re 20 µPa for harbor seals and at or above 100 dB re 20 µPa for all other pinniped species. Pinnipeds at Children's Pool are likely already exposed to and habituated to loud noise and human presence, and thus may have areas of effect comparable to the radius of effect calculated for noise from the demolition and construction activities. Behavioral considerations suggest that the pinnipeds would be able to determine that a noise source does not constitute a threat if it is more than a certain distance away, and the sound levels involved are not high enough to result in injury (Level A harassment). Nonetheless, these data suggest that demolition and construction activities may affect pinniped behavior throughout the Children's Pool area, i.e., within approximately a few hundred feet of the activity. The nature of that effect is unpredictable, but logical responses on the part of the pinnipeds include tolerance (noise levels would likely not be loud enough to induce temporary threshold shift in harbor seals), or avoidance by using haul-outs or by foraging outside of the immediate Children's Pool area.

In-Air Noise—The principal source of in-air noise would be from a 980 Case backhoe, dump truck, air compressor, electric screw guns, jackhammer, concrete saw, and chop saws used for the demolition and construction activities. Background noise levels near the Children's Pool are likely already elevated due to normal activities (e.g., human presence and traffic) and the ocean. There have been no studies conducted at the Children's Pool regarding background noise in the area, but the City of San Diego will conduct pre- and post-acoustic monitoring to determine ambient sound levels as well as noise levels generated from the demolition and construction activities. Marine mammals at Children's Pool haul-outs are presumably tolerant and acclimated to the daily coming and going of humans, automobiles, and to other existing activities at the action area. These activities may occur at any time of the day for periods of up to several hours at a time.

Hanan & Associates (2004) noted that harbor seals hauled-out at the Children's Pool are exposed to the constant presence of humans (on the beach, sea wall, lifeguard tower, and sidewalks). There are so many human visitors to the Children's Pool site at all hours of the day and night, season, and weather that human scent and visual presence are generally not considered issues (Hanan, 2004; 2011). At this site, the Pacific harbor seals are most disturbed when people get very close to them on the beach (i.e., probably 2 to 3 m [6.6 to 9.8 ft]. However, the City of San Diego wants to be authorized for incidental take coverage in case pinnipeds alert to the novel presence or sounds of equipment not previously experienced by pinnipeds at this location. The contractors will not directly approach the Pacific harbor seals during the demolition and construction activities.

At the individual level, a newly arrived pinniped (moved in from another area) may not have acclimated to humans and noise as pinnipeds that have been on site for awhile. These recent arrivals may alert to these stimuli, perhaps flushing into the water. However, after a few days of using the beach at Children's Pool, the City of San Diego would expect the pinnipeds to acclimate and not react to humans (unless close to them) or noises at the demolition and construction activities site. Observations have shown that loud and startling noises have consistently caused some of the harbor seals at the site to flush into the water, and generally the harbor seals returned to the haul-out site within a short time (Hanan & Associates, 2002; Yochem, 2004; Hanan & Associates, 2011).

Although harbor seals could also be affected by in-air noise and activity associated with demolition and construction at the lifeguard station, harbor seals at Children's Pool haul-outs are presumably acclimated to human activity to some extent due to the daily coming and going (i.e., presence) of humans, and to other existing activities in the area. These activities may occur at any time of the day and may produce noise for periods of up to several hours at a time. The operation of loud equipment are above and outside of the range of normal activity at the Children's Pool and have the potential to cause seals to leave a haul-out at the Children's Pool. This would constitute Level B harassment (behavioral). In view of the relatively small area that would be affected by elevated in-air noise and the proximity to the haul-out sites, it appears probable that some harbor seals could show a behavioral response, despite their tolerance to current levels of human-generated noise; incidental take by this mechanism may occur during the demolition and construction activities.

Harbor seal presence in the activity area is perennial, with daily presence at a nearby haul-out (Seal Rock is several hundred yards east of the Children's Pool site) during the months when the activity would occur. The potentially affected harbor seals include adults of both sexes. The harbor seals at Children's Pool may be non-migratory residents, exhibiting site fidelity at the haul-out sites. Harbor seals often stay within a 50 km (31.1 miles) range of haul-outs, but young individuals and adult males have lower site fidelity and dispersal rates. Adult females are known to mate and give birth in the area where they were born (i.e., high degree of natal philopatry) (Harkonen and Harding, 2001; Linder, 2011). Cannon (2009) documented individuals moving between haul-out sites at Las Islas Coronados, Mexico and the Children's Pool, which are located approximately 50 km apart (Linder, 2011). However, it is possible that at least some of the harbor seals using this site come from moderate distances, as they are known to travel distances up to approximately 550 km (297 nmi) for foraging or mating purposes (Herder, 1986; Linder, 2011; Hanan & Associates, 2011). A study by Greenslade (2002) on diet and foraging ecology suggests that the harbor seals at Children's Pool travel some distance away from the haul-out site to feed, as the main prey species in their diet (i.e., Pacific sanddab and Pacific hake) do not

occur in the kelp forest near the La Jolla area (Linder, 2011).

Although harbor seals are tolerant to the presence of humans and other visible and non-visible disturbances, they may display a range of behaviors when exposed to noise from demolition and construction activities. Using the webcam, WAN has documented that when major flushing events occur it can take a day or two for them to return in the same numbers. Videos of these events can be found online at: *http://www.youtube.com/watch?v=UWH3z2iP1Ms&Feature=youtu.be* and *http://www.youtube.com/watch?v=VRQyn6IOUxY*.

It is likely that many harbor seals in the "urbanized" population would be affected more than once over the course of the demolition and construction period; therefore, it is possible that some measure of adaptation or acclimatization would occur on the part of the harbor seals, whereby they would tolerate elevated noise levels and/or utilize haul-outs relatively distant from the demolition and construction activities. This strategy is possible, but it is difficult to predict whether the harbor seals would show such a response. Project scheduling avoids the most sensitive breeding phases of harbor seals. Project activities producing in-air noise would commence in June, after pupping season and when pups have been weaned. Project activities producing in-air noise are scheduled to terminate by the middle of December, which is before adult female harbor seals begin pupping. Visibly pregnant females may begin using this site in November, and perhaps as early as October.

Effects on California Sea Lions and Northern Elephant Seals—California sea lions and northern elephant seals, although abundant in northern California waters, have seldom been recorded at the Children's Pool. Their low abundance in the area may be due to the presence of a large and active harbor seal population there, which likely competes with the California sea lions and northern elephant seals for foraging resources. Any California sea lions that visit the action area during construction activities would be subject to the same type of impacts described above for harbor seals. There is a possibility of behavioral effects related to project acoustic impacts, in the event of California sea lion and northern elephant seal presence in the activity area. California sea lions and northern elephant seals have been seen in the activity area, albeit infrequently, and there are no quantitative estimates of the frequency of their occurrence. Assuming that they are present, it is possible California sea lions and northern elephant seals might be subject to behavioral harassment.

The potential effects to marine mammals described in this section of the document do not take into consideration the monitoring and mitigation measures described later in this document (see the "Mitigation" and "Monitoring and Reporting" sections) which, as noted are designed to effect the least practicable adverse impact on affected marine mammal species or stocks.

Anticipated Effects on Marine Mammal Habitat

All demolition and construction activities are beyond or outside the habitat areas where harbor seals and other pinnipeds are found. Visual barriers will be erected to shield construction activities from the visual perception and potentially dampen acoustic effects on pinnipeds. Because the public occasionally harasses the harbor seals with various activities, the NMFS-qualified PSO monitoring the site will make observations and attempt to distinguish and attribute any observed harassment to the public or to the demolition and construction activities and give all details in the observation report. If any short-term, temporary impacts to habitat due to sounds or visual presence of equipment and workers did occur, the City of San Diego would expect pinniped behavior to return to pre-demolition and construction conditions soon after the activities are completed which is anticipated to occur before the next pupping season (Hanan & Associates, 2011). This site is already very disturbed by member of the public who come to the area during the day and night to view the pinnipeds. The City of San Diego and NMFS do not project any loss or modification of physical habitat for these species. Any potential temporary loss or modification of habitat due to in-air noise or visual presence of equipment and workers during the activities is expected by the City of San Diego and NMFS to be quickly restored after demolition and construction activities end and all equipment and barriers are removed.

The anticipated adverse impacts upon habitat consist of temporary changes to the in-air acoustic environment, as detailed in the IHA application. These changes are minor, temporary, and of limited duration to the period of demolition and construction activities. No aspect of the project is anticipated to have any permanent effect on the location of pinniped haul-outs in the area, and no permanent change in seal or sea lion use of haul-outs and related habitat features is anticipated to occur as a result of the project (Hanan & Associates, 2011). The temporary impacts on the acoustic environment are not expected to have any permanent effects on the species or stock populations of marine mammals occurring at the Children's Pool. The area of habitat affected is small and the effects are temporary, thus there is no reason to expect any significant reduction in habitat available for foraging and other habitat uses.

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around the Children's Pool less desirable during demolition and construction activities of the Children's Pool Lifeguard Station as the impacts will be localized. Impacts to marine mammals, invertebrates, and fish species are not expected to be detrimental.

Mitigation

In order to issue an ITA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The City of San Diego has established the Children's Pool as a shared beach for pinnipeds and people. In the past, during the pupping season, a rope was placed along the upper part of the beach to designate how close people can come to the haul-out area. The timeframe for the rope has been extended so that it is now present year-round. The demolition and construction activities are planned to occur outside the harbor seal pupping and weaning periods. Visual and acoustic barriers will be constructed. The visual and acoustic barrier will be constructed of plywood, 1.8 to 2.4 m (6 to 8 ft) tall. The barriers will be placed at the site with input from NMFS Southwest Regional Office (SWRO) personnel so that they will hide as advantageously as possible the demolition and construction activities that may be seen by pinnipeds. The barriers may dampen the acoustic sound sources, but are not expected to exclude sound from the environment. As the site is a beach with construction along the cliff and on flat areas above the cliff, a complete barrier cannot likely be constructed to hide all demolition and

construction activities for the project. Once the walls of the lifeguard station's building are in place, much of the demolition and construction activities will take place above the Children's Pool beach (i.e., out of sight) as well as inside the building (i.e., a visual and partial sound barrier). There will be no activities in the ocean or closer to the water's edge and since harbor seals mate underwater in the ocean, there will be no impacts on mating activities. California sea lions and northern elephant seals are such infrequent users of this area and their rookeries are so far away (at least 104.6 km [65 miles] at offshore islands) that there will be no adverse impact on these species.

Since the notice of the proposed IHA (78 FR 25958, May 3, 2013), NMFS has modified several of the monitoring and mitigation measures included in the proposed IHA for practicability reasons, as well as included several additional measures. These include changing the pupping season from December 15th to May 15th and prohibiting demolition and construction activities during this time; extending demolition and construction activities from 7 a.m. to 7 p.m. to help assure that the project is completed during the 2013 demolition and construction window; continuing monitoring for 60 days following the end of demolition and construction activities; and triggering a shut-down of demolition and construction activities in the unexpected event of abandonment of the Children's Pool site. The mitigation measure on scheduling the heaviest demolition and construction activities (with the highest sound levels) during the annual period of lowest haul-out occurrence (October to November) was removed as it was included in the City of San Diego's Mitigated Negative Declaration when it was anticipated that the City of San Diego would obtain an IHA in the summer of 2012 and begin demolition and construction activities in the fall of 2012. This is no longer practicable due to logistics, scheduling and to allow the planned activities to be completed before the next pupping season.

The activity planned by the applicant includes a variety of measures calculated to minimize potential impacts on marine mammals, including:

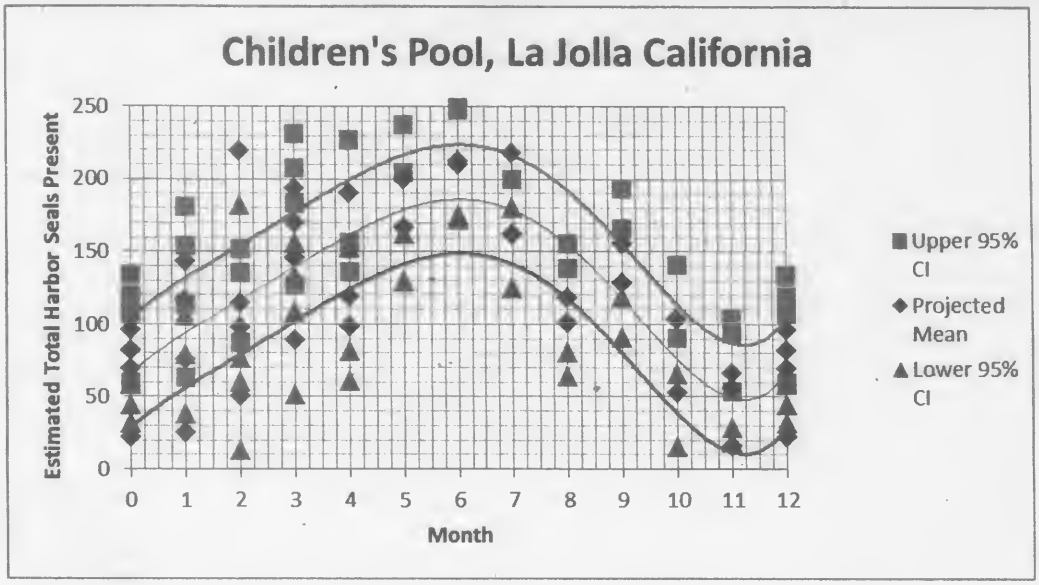
- Construction shall be prohibited during the Pacific harbor seal pupping season (December 15th to May 15th) and for an additional four weeks to accommodate lactation and weaning of late season pups. Thus, construction shall be prohibited from December 15th to June 1st.
- Demolition and construction activities shall be scheduled, to the maximum extent practicable, during the daily period of lowest haul-out occurrence, from approximately 8:30 a.m. to 3:30 p.m.; however, demolition and construction activities may be extended from 7 a.m. to 7 p.m. to help assure that the project can be completed during the 2013 demolition and construction window. Harbor seals typically have the highest daily or hourly haul-out period during the afternoon from 3 p.m. to 6 p.m.
- A visual and acoustic barrier will be erected and maintained for the duration of the project to shield demolition and construction activities from beach view. The temporary barrier shall consist of ½ to ¾ inch (1.3 to 1.9 centimeters [cm]) plywood constructed 1.8 to 2.4 m (6 to 8 ft) high depending on the location.
- Use of trained PSOs to detect, document, and minimize impacts (i.e., possible shut-down of noise-generating operations [turning off the equipment so that in-air sounds associated with construction no longer exceed levels that are potentially harmful to marine mammals]) to marine mammals.

Timing Constraints for In-Air Noise

To minimize in-air noise impacts on marine mammals, underwater construction activities shall be limited to the period when the species of concern will be least likely to be in the project area. The construction window for demolition and construction activities shall be from June 1 to December 15, 2013. The IHA may extend through June of 2014 to finish the demolition and construction activities if needed. Avoiding periods when the highest number of marine mammal individuals are in the action area is another mitigation measure to protect marine mammals from demolition and construction activities.

Abandonment

After the first two months of monitoring during demolition and construction activities, the City of San Diego will take the mean number of observed harbor seals at the Children's Pool in a 24-hour period across that two months and compare it to the mean of the lower 95 percent confidence interval in Figure 1 (see below). If the observed mean is lower, the City of San Diego will shut-down demolition and construction activities and work with NMFS and other harbor seal experts (e.g., Mark Lowry, Dr. Sarah Allen, Dr. Pamela Yochem, and/or Dr. Brent Stewart) to develop and implement a revised mitigation plan to further reduce the number of takes and potential impacts. Once a week every week thereafter, the City of San Diego will take the same mean of observed harbor seals across the previous three tide cycles (a tide cycle is approximately 2 weeks) and compare it to the 95% lower confidence interval in Figure 1 for the same time period. If the observed mean is lower, the City of San Diego will shut-down and take the action described above. If abandonment of the site is likely, monitoring will be expanded away from the Children's Pool to determine if animals have been temporarily displaced to haul-out sites in the southern California area (e.g., Torrey Pines, Point Loma, etc.). For the purpose of this action, NMFS will consider the Children's Pool site to possibly be abandoned if zero harbor seals are present each day during the daytime and nighttime hours for at least three tide cycles (a tide cycle is approximately 2 weeks), but this cannot be confirmed until observed to continue to be zero during a full pupping and molting season.



More information regarding the City of San Diego's monitoring and mitigation measures, for the demolition and construction activities at the Children's Pool Lifeguard Station can be found in the IHA application.

NMFS has carefully evaluated the applicant's 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. NMFS's evaluation of potential measures included consideration of the following factors in relation in 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, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the activity.

NMFS has determined that the mitigation measures will have the least practicable adverse impact on the species or stocks of marine mammals in the action area.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs 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 action area.

The City of San Diego has developed a monitoring plan (see Appendix I. Mitigated Negative Declaration in the IHA application) based on discussions between the project biologist, Dr. Doyle Hanan, and NMFS biologists. The plan has been vetted by City of San Diego planners and reviewers. The plan has been formal presented to the public for review and comment. The City of San Diego has responded in writing and in public testimony (see City of Council Hearing, December 14, 2011) to all public concerns.

The basic plan is to survey prior to construction activities and then monitor demolition and construction activities by NMFS-approved PSOs with high-resolution binoculars and handheld digital sound level meters (measuring devices). PSOs will observe from a station along the breakwater wall as well as the base of the cliff below the demolition/construction area. PSOs will be on site approximately 30 minutes before the start of demolition and construction activities and continue for 30 minutes after activities have ceased. Monitors will have authority to stop construction as necessary depending on sound levels, pinniped presence, and distance from sound sources. Daily monitoring reports will be maintained for periodic summary reports to the City of San Diego and to NMFS. Observations will be entered into maintained Hanan & Associates computers. The City of San Diego plans to follow the reporting in the Mitigated Negative Declaration that states "the biologist shall document field activity via the Consultant Site Visit Record. The Consultant Site Visit Record shall be either emailed or faxed to the City of San Diego's Mitigation Monitoring Coordination process (MMC) on the 1st day of monitoring, the 1st week of each month, the last day of monitoring, and immediately in the case of any undocumented discovery. The project biologist shall submit a final construction monitoring report to MMC within 30 days of construction completion." The MMC "coordinates the monitoring of development projects and requires that changes are approved and implemented to be in conformance with the permit requirements and to minimize any damage to the environment." These documents will also be sent to NMFS.

The City of San Diego will include sound measurements at and near the demolition and construction site in their initial survey prior to the activities as a background and baseline for the project. While no specific acoustic study is planned, the City of San Diego's Mitigated Negative Declaration states that marine mammal monitoring shall be conducted for three to five days prior to construction and shall include hourly systematic counts of pinnipeds using

the beach, Seal Rock, and associated reef areas. Monitoring three to five days prior to construction will provide baseline data regarding recent haul-out behavior and patterns as well as background noise levels near the time of demolition and construction activities. The City of San Diego has modified its monitoring program to include 60 days of monitoring post-demolition and construction activities. Following demolition and construction, the City of San Diego will have a program of onsite PSOs that will randomly select a day per week integrated with 10 randomly selected 30 minute monitoring periods using the WAN webcam on three non-observed days via their computers when the WAN webcam is working. During the demolition and construction activities, monitoring shall assess behavior and potential behavioral responses to demolition and construction noise and activities. Visual digital recordings and photographs shall be used to document individuals and behavioral responses to demolition and construction. The City of San Diego plan to make hourly counts of the number of pinnipeds present and record sound or visual events that result in behavioral responses and changes, whether during construction or from public stimuli. During these events, pictures and video will also be taken when possible. The "Mitigated Negative Declaration" states "monitoring shall assess behavior and potential behavioral responses to construction noise and activities. Visual digital recordings and photographs shall be used to document individuals and behavioral responses to construction."

The City of San Diego is open to working with the WAN's La Jolla Harbor Seal Webcam, which can be found online at: *http://www.wanconservancy.org/la_jolla_harbor_seal_earthcam.htm.* The City of San Diego may do periodic checks using the webcam for monitoring purposes. The camera is not expected to replace NMFS-qualified PSOs at the site making accurate counts, measuring sound levels and observing the public and the construction, as well as the harbor seals. In the camera view, you may be able to see visual evidence of Level B harassment, but it probably would not be able to be distinguished between harassment from demolition and construction activities and the public since the camera has a limited scope and only shows the Children's Pool beach and pinnipeds (usually a specific portion of the beach, but not the reef nor nearby beaches).

Consistent with NMFS procedures, the following marine mammal monitoring and reporting shall be performed for the action:

(1) A NMFS-approved or -qualified PSO shall attend the project site prior to, during, and after construction activities cease each day throughout the demolition and construction window.

(2) The PSO shall be approved by NMFS prior to demolition and construction activities.

(3) The PSO shall search for marine mammals within the Children's Pool area.

(4) The PSO shall be present during demolition and construction activities to observe for the presence of marine mammals in the vicinity of the specified activity. All such activity will occur during daylight hours (i.e., 30 minutes after sunrise and 30 minutes before sunset). If inclement weather limits visibility within the area of effect, the PSO will perform visual scans to the extent conditions allow

(5) If marine mammals are sighted by the PSO within the acoustic thresholds areas, the PSO shall record the number of marine mammals within the area of effect and the duration of their presence while the noise-generating activity is occurring. The PSO will also note whether the marine mammals appeared to respond to the noise and if so, the nature of that response. The PSO shall record the following information: Date and time of initial sighting, tidal stage, weather conditions, Beaufort sea state, species, behavior (activity, group cohesiveness, direction and speed of travel, etc.), number, group composition, distance to sound source, number of animals impacted, demolition/construction activities occurring at time of sighting, and monitoring and mitigation measures implemented (or not implemented). The observations will be reported to NMFS:

(6) A final report will be submitted summarizing all in-air demolition and construction activities and marine mammal monitoring during the time of the authorization, and any long term impacts from the project.

A written log of dates and times of monitoring activity will be kept. The log shall report the following information:

- Time of observer arrival on site;
- Time of the commencement of in-air noise generating activities, and description of the activities;
- Distances to all marine mammals relative to the sound source;
- For harbor seal observations, notes on seal behavior during noise-generating activity, as described above, and on the number and distribution of seals observed in the project vicinity;
- For observations of all marine mammals other than harbor seals, the time and duration of each animal's presence in the project vicinity; the number of animals observed; the behavior of each animal, including any response to noise-generating activities;
- Time of the cessation of in-air noise generating activities; and
- Time of observer departure from site.

All monitoring data collected during demolition and construction will be included in the biological monitoring notes to be submitted. A final report summarizing the demolition and construction monitoring and any general trends observed will also be submitted to NMFS within 90 days after monitoring has ended during the period of the lifeguard station demolition and construction.

The City of San Diego would notify NMFS Headquarters and the NMFS Southwest Regional Office prior to initiation of the demolition and construction activities. A draft final report must be submitted to NMFS within 90 days after the conclusion of the demolition and construction activities of the Children's Pool Lifeguard Station. The report would include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of operations, and all marine mammal sightings (dates, times, locations, species, behavioral observations [activity, group cohesiveness, direction and speed of travel, etc.], tidal stage, weather conditions, Beaufort sea state and wind force, activities, associated demolition and construction activities). A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

While the IHA would not authorize injury (i.e., Level A harassment), serious injury, or mortality, should the applicant, contractor, monitor or any other individual associated with the demolition and construction project observe an injured or dead marine mammal, the incident (regardless of cause) will be reported to NMFS as soon as practicable. The report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

In the unanticipated event that the City of San Diego discovers a live stranded marine mammal (sick and/or injured) at Children's Pool, they shall immediately contact Sea World's stranded animal hotline at 1–800–541–

7235. Sea World shall also be notified for dead stranded pinnipeds so that a necropsy can be performed. In all cases, NMFS shall be notified as well, but for immediate response purposes, Sea World shall be contacted first.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury or mortality, the City of San Diego shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov* and the Southwest Regional Stranding Coordinator (*Sarah.Wilkin@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- The type of activity involved;
- Description of the circumstances during and leading up to the incident;
- Status of all sound source use in the 24 hours preceding the incident; water depth; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved;
- The fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with the City of San Diego to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City of San Diego may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), the City of San Diego will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Southwest Regional Office (562–980–4017) and/or by email to the Southwest Regional Stranding Coordinator (*Sarah.Wilkin@noaa.gov*). The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the City of San Diego to determine whether modifications in the activities are appropriate.

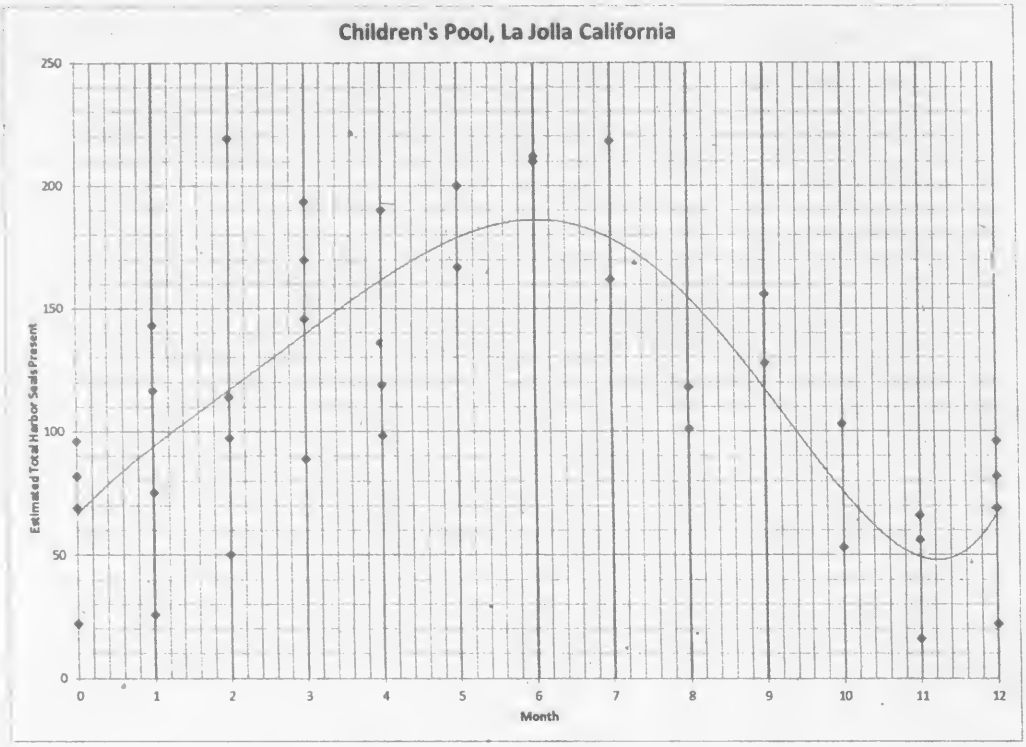
In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the City of San Diego shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Southwest Regional Office (562–980–4017) and/or by email to the Southwest Regional Stranding Coordinator (*Sarah.Wilkin@noaa.gov*), within 24 hours of the discovery. The City of San Diego shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

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].

The City of San Diego and NMFS anticipate takes of Pacific harbor seals, California sea lions, and northern elephant seals by Level B (behavioral) harassment only incidental to the project at the Children's Pool. No takes by injury (Level A harassment), serious injury, or mortality is expected. There is a high likelihood that many of the harbor seals present during the demolition and construction activities will not be flushed off of the beach or rocks, as pinnipeds at this site are conditioned to human presence and loud noises (Hanan, 2004; 2011) (see *http://www.youtube.com/watch?v=4IRUYVTULsg*).

With demolition and construction activities scheduled to begin in June 2013, the City of San Diego expects a range of 0 to 190 harbor seals to be present daily during June and a seasonal decline through November to about 0 to 50 harbor seals present daily. If all of the estimated harbor seals present are taken by incidental harassment each day, there could be a maximum of 12,783 takes (i.e., approximately 3,579 adult males and 2,684 juvenile males, 3,451 adult females and 2,429 juvenile females based on age and sex ratios presented in Harkonen *et al.*, 1999) over the entire duration of the demolition and construction activities. The City of San Diego expects about 90% of the adult females to be pregnant after June and July (Greig, 2002). An unknown portion of the incidental takes would be from repeated exposures as harbor seals leave and return to the Children's Pool area. A polynomial curve fit to counts by month was used by the City of San Diego to estimate the number of harbor seals expected to be hauled-out by day (see below and Figure 1 of the IHA application).



Assuming the total seals predicted to haul-out daily at the Children's Pool are exposed to sound levels that are considered Level B harassment during days where sound is predicted to exceed 90 dB at the demolition/construction site (106 days), there could be a maximum of approximately 12,783 incidental takes (i.e., exposures) of approximately up to 600 individual Pacific harbor seals over the duration of the activities. The estimated 600 individual Pacific harbor seals will be taken by Level B harassment multiple times during the demolition and construction activities. Very few California sea lions and/or northern elephant seals are ever observed at the Children's Pool (i.e., one or two individuals). The City of San Diego requests the authority to incidentally take (i.e., exposures) 12,783 Pacific harbor seals, 100 California sea lions, and 25 northern elephant seals of 600, 2, and 1 individual, respectively. More information on the number of requested authorized takes, estimated number of individuals, and the approximate percentage of the stock for the three species in the action area can be found in Table 2 (below).

NMFS will consider pinnipeds flushing into the water; moving more than 1 m (3.3 ft), but not into the water; becoming alert and moving, but do not moving more than 1 m; and changing direction of current movement by individuals as behavioral criteria for take by Level B harassment. The City of San Diego will estimate the portion of pinnipeds present that are observed to exhibit these behaviors as well as the apparent source of the stimulus (i.e., if it is from human presence, demolition and construction activities, or other).

TABLE 2—SUMMARY OF THE ANTICIPATED INCIDENTAL TAKE BY LEVEL B HARASSMENT OF PINNIPEDS FOR THE CITY OF SAN DIEGO'S DEMOLITION AND CONSTRUCTION ACTIVITIES GENERATING IN-AIR NOISE AT THE CHILDREN'S POOL LIFEGUARD STATION IN LA JOLLA, CALIFORNIA

Species	Requested take authorization (number of exposures)	Estimated number of individuals taken	Approximate percentage of estimated stock (individuals)
Pacific harbor seal	12,783	600	1.98
California sea lion	100	2	<0.01
Northern elephant seal	25	1	<0.01

Encouraging and Coordinating Research

Each demolition/construction phase and potential harassment activity will be evaluated as to observed sound levels and any pinniped reaction by type of sound source. Flushing will be documented by sex and age class. These data will provide instructional for IHA permitting in future projects. Potential mitigation will be discussed and suggested in the final report. NMFS has

encouraged the City of San Diego to work with WAN to review and analyze any available data to determine baseline information as well as evaluate the impacts from the demolition and construction activities on the pinnipeds at the Children's Pool. The City of San Diego is open to working with the WAN's La Jolla Harbor Seal Webcam, which can be found online at: *http://www.wanconservancy.org/la_jolla_harbor_seal_earthcam.htm*. The City of San Diego may do periodic checks using the webcam for monitoring purposes.

Negligible Impact and Small Numbers Analyses and Determinations

As a preliminary matter, NMFS typically includes our negligible impact and small numbers analyses and determinations under the same section heading of our **Federal Register** notices. Despite co-locating these terms, NMFS acknowledges that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analyses presented below do no conflate the two standards; instead, each standard has been considered independently and NMFS has applied the relevant factors to inform our negligible impact and small numbers determinations.

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

No injuries (Level A harassment), serious injuries, or mortalities are anticipated to occur as a result of the City of San Diego's demolition and construction activities, and none are authorized by NMFS. The activities are not expected to result in the alteration of reproductive behaviors, and the potentially affected species would be subjected to temporary only to temporary and minor behavioral impacts.

As discussed in detail above, the project scheduling avoids sensitive life stages for Pacific harbor seals. Project activities producing in-air noise would commence in June and end by December 15th. June is after the end of the pupping season and affords additional time to accommodate lactation and weaning of season pups as well as considers periods of lowest haul-out occurrence. The December 15th end date should provide more protection for the pregnant and nursing harbor seals in case they give birth before January 1st; however, most births occur after the beginning of January. Table 2 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see "Potential Effects on Marine Mammals" section above) in this notice, this activity is not expected to impact rates of annual recruitment or survival for the affected species or stock (i.e., California stock of Pacific harbor seals, U.S. stock of California sea lions, and California breeding stock of northern elephant seals), particularly given the NMFS and the applicant's plan to implement required mitigation, monitoring, and reporting measures to minimize impacts to marine mammals.

For the other marine mammal species that may occur within the action area, there are no known designated or important feeding and/or reproductive areas. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). However, for many years Pacific harbor seals have been hauling-out at Children's Pool during the year (including during pupping season and while females are pregnant) and have been exposed to anthropogenic sound sources such as vehicle traffic, human voices, etc. and are frequently exposed to stimuli from human presence. While studies have shown the types of sound sources used during the demolition and construction activities have the potential to displace marine mammals from breeding areas for a prolonged period (e.g., Lusseau and Bejder, 2007; Weilgart, 2007), based on the best available information, this does not seem to be the case for the Pacific harbor seals at the Children's Pool. Over many years, the Pacific harbor seals have repeatedly hauled-out to pup and overall the NMFS Stock Assessment Reports (NMFS, 2011) for this stock have shown that the population is increasing and is considered stable. Additionally, the demolition and construction activities will be increasing sound levels in the environment in a relatively small area surrounding the lifeguard station (compared to the range of the animals), and some animals may only be exposed to and harassed by sound for less than a day.

Of the 3 marine mammal species under NMFS jurisdiction that may or are known to likely occur in the action area, none are listed as threatened or endangered under the ESA. No incidental take has been requested to be authorized for ESA-listed species as none are expected to be within the action area. There is generally insufficient data to determine population trends for the other depleted species in the study area. To protect these animals (and other marine mammals in the action area), the City of San Diego must prohibit demolition and construction activities during harbor seal pupping season; scheduling demolition and construction activities with highest sound levels during the annual period of lowest haul-out occurrence and during the daily period of lowest haul-out occurrence; limiting activities to the hours of daylight; erecting a temporary visual and acoustic barrier; and using PSOs. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, and the activity is not expected to impact rates of recruitment or survival.

As mentioned previously, NMFS estimates that 3 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. It is estimated that up to 600 individual Pacific harbor seals, 2 individual California sea lions, and 1 northern elephant seal will be taken (multiple times) by Level B harassment, which would be approximately 1.98, less than 0.01, and less than 0.01 of the respective California, U.S., and California breeding stocks. The population estimates for the marine mammal species that may be taken by Level B harassment were

provided in Table 2 of this document. NMFS's practice has been to apply the 90 dB re 20 μPa and 100 dB re 20 μPa received level threshold for in-air sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]). NMFS has not established a threshold for Level A harassment (injury) for marine mammals exposed to in-air noise, however, Southall *et al.* (2007) recommends 149 dB re 20 μPa (peak flat) as the potential threshold for injury from in-air noise for all pinnipeds. No in-air sounds from demolition and construction activities will exceed 110 dB at the source.

While behavioral modifications, including temporarily vacating the area during the demolition and construction activities, may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas for species and the short and sporadic duration of the activities, have led NMFS to determine that the taking by Level B harassment from the specified activity will have a negligible impact on the affected species in the specified geographic region. NMFS believes that the time period of the demolition and construction activities, the requirement to implement mitigation measures (e.g., prohibiting demolition and construction activities during pupping season, scheduling operations to periods of the lowest haul-out occurrence, visual and acoustic barriers, and the addition of a new measure that helps protect against unexpected abandonment of the site), and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the activity to the degree that will have a negligible impact on the species or stocks in the action area.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of the demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California, June to December 2013, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. See Table 2 for the requested authorized take numbers of marine mammals.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (off of southern California in the northeast Pacific Ocean) that implicate MMPA section 101(a)(5)(D).

Endangered Species Act

NMFS (Permits and Conservation Division) has determined that a section 7 consultation for the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity is not necessary for any ESA-listed marine mammal species under its jurisdiction as the action will not affect ESA-listed species.

National Environmental Policy Act

For consistency with regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, NMFS prepared an EA titled "Environmental Assessment on the Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Marine Mammals by Harassment Incidental to Demolition and Construction Activities at the Children's Pool Lifeguard Station in La Jolla, California." After considering the EA, the information in the IHA application, and the **Federal Register** notice, as well as public comments, NMFS has determined that the issuance of the IHA is not likely to result in significant impacts on the human environment and has prepared a Finding of No Significant Impact (FONSI). An Environmental Impact Statement is not required and will not be prepared for the action.

Authorization

NMFS has issued an IHA to the City of San Diego for the take, by Level B harassment, of small numbers of marine mammals incidental to demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 2, 2013.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–16263 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration Multistakeholder Meeting To Develop Consumer Data Privacy Code of Conduct Concerning Mobile Application Transparency

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting; reschedule.

SUMMARY: Through this Notice, the National Telecommunications and Information Administration (NTIA) announces that the July 9, 2013 open meeting announced in the **Federal Register** on June 12, 2013 of the privacy multistakeholder process concerning mobile application transparency has been rescheduled for July 25, 2013.

DATES: The rescheduled meeting will be held on July 25, 2013 from 1:00 p.m. to 5:00 p.m., Eastern Time. See **SUPPLEMENTARY INFORMATION** for details.

ADDRESSES: The rescheduled meeting will be held in the Gallery at the American Institute of Architects, 1735 New York Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: John Verdi, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; telephone (202) 482–8238; email *jverdi@ntia.doc.gov*. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background: For additional information, please see the **Federal Register** notice published on June 12, 2013. Notice of Open Public Meeting, *Multistakeholder Meeting To Develop Consumer Data Privacy Code of Conduct Concerning Mobile Application Transparency*, 78 FR 35260 (June 12, 2013) (Multistakeholder Meeting Notice).

Matters To Be Considered: The July 25, 2013 meeting is part of a series of NTIA-convened multistakeholder discussions concerning mobile application transparency. For additional information, please see the Multistakeholder Meeting Notice.

Time and Date: NTIA will convene a meeting of the privacy multistakeholder process on July 25, 2013, from 1:00 p.m. to 5:00 p.m., Eastern Time. The meeting time is subject to change. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/other-publication/2012/privacy-multistakeholder-process-mobile-application-transparency*, for the most current information.

Place: The rescheduled meeting will be held in the Gallery at the American Institute of Architects, 1735 New York Avenue NW., Washington, DC 20006. The location of the meeting is subject to change. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/other-publication/2012/privacy-multistakeholder-process-mobile-application-transparency*, for the most current information.

Other Information: The meeting is open to the public and the press. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to John Verdi at (202) 482–8238 or *jverdi@ntia.doc.gov* at least seven (7) business days prior to the meeting. The meeting will also be webcast. Requests for real-time captioning of the webcast or other auxiliary aids should be directed to John Verdi at (202) 482–8238 or *jverdi@ntia.doc.gov* at least seven (7) business days prior to the meeting. There will be an opportunity for stakeholders viewing the webcast to participate remotely in the meeting through a moderated conference bridge, including polling functionality. Access details for the meeting are subject to change. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/other-publication/2012/privacy-multistakeholder-process-mobile-application-transparency*, for the most current information.

Dated: July 2, 2013.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2013–16300 Filed 7–5–13; 8:45 am]

BILLING CODE 3510–60–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 18 July 2013, at 9:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington DC, 20001–2728. Items of discussion may include buildings, parks, and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *CFAStaff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated June 27, 2013 in Washington, DC.

Thomas Luebke,

Secretary, AIA.

[FR Doc. 2013–16243 Filed 7–5–13; 8:45 am]

BILLING CODE 6331–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 8/8/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Addition

On 5/3/2013 (78 FR 25970–25971), 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 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/Locations: Military Personnel Support Service, Force Support Div., Manpower & Military Personnel Branch, Joint Expeditionary Base Little Creek-Fort Story, Fort Story, VA. Force Support Div., Manpower & Military Personnel Branch, Joint Base Langley-Eustis Joint Base Langley-Eustis, VA.

NPA: ServiceSource, Inc., Alexandria, VA.

Contracting Activity: Dept of the Air Force, FA4800 633 CONS LGCP, Langley AFB, VA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–16274 Filed 7–5–13; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 8/8/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

For Further Information or to Submit Comments Contact: Barry S. Lineback,

Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

Towel, Hazardous Material Absorbent, Cotton, Red

NSN: 4235–01–526–4342—15" x 15"
NPA: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Defense Logistics Agency Aviation, Richmond, VA
Coverage: B-List for the Broad Government Requirement as aggregated by the Defense Logistics Agency Aviation, Richmond, VA.

Power Duster

NSN: 6850–01–517–1506—10 oz. CN
NSN: 6850–01–412–0040—10 oz. 12/BX

Cleaner, Brake Parts

NSN: 6850–01–167–0678—17 oz.
NPA: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: Defense Logistics Agency Aviation, Richmond,
Coverage: B-List for the Broad Government Requirement as aggregated by the Defense Logistics Agency Aviation, Richmond, VA.

Service

Service Type/Location: Grounds Maintenance Service, USCG, Air Station-Savannah, 1297 N Lightning Rd, Savannah, GA
NPA: Goodwill Industries of the Coastal Empire, Inc., Savannah, GA
Contracting Activity: U.S. Coast Guard, Base Miami, Miami, FL

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–16273 Filed 7–5–13; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, July 10, 2013, 10 a.m.–12 p.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public

MATTERS TO BE CONSIDERED:

Hearing: Agenda and Priorities for Fiscal Years 2014 and 2015

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live*. For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 2, 2013.

Todd A. Stevenson,

Secretary.

[FR Doc. 2013–16420 Filed 7–3–13; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, July 9, 2013, 10 a.m.–12 p.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public

Matters To Be Considered

Briefing Matter:

1. Amendment to Play Yard Standard
2. Bassinets and Cradles

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live*.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 2, 2013.

Todd A. Stevenson,

Secretary.

[FR Doc. 2013–16419 Filed 7–3–13; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0149]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense (Personnel and Readiness) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 6, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Federal Docket Management Systems Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and

Readiness), Department of Defense Education Activity (DoDEA), 4800 Mark Center Drive, Alexandria, VA 22350 ATTN: Dr. Sandra D. Embler or call (571) 372–6006.

Title and OMB Control Number: "2013 Speak Up Survey," OMB Control Number: 0704–TBD.

Needs and Uses: The Speak-Up National Survey is an annual online survey created and administered by Project Tomorrow. DoDEA will participate in the survey in order to gather information from students and parents of students attending DoDEA schools on the use of technology in education throughout the United States. The survey provides data on how these groups are using and would like to use technology for learning in and out of school. Broad areas of information gathered via the surveys include: The benefits of using technology for learning; attitudes and interest in math and science, as well as career aspirations; how respondents self-assess their 21st century skills competencies. The information gathered via the surveys does not currently exist, especially in a format that allows comparisons between DoDEA and national trends. The data resulting from the survey will be used by DoDEA as a planning tool and needs assessment. The information from the survey as compared with national trends will be effective in assisting DoDEA in providing well-planned technology initiatives that meet the needs of our military-connected students and other stakeholders. The data will also be used to plan training and professional development for DoDEA employees, especially teachers, as it will accurately reflect the needs of teachers and other staff members alike. The data are essential to meet the President's charge in the recent technology-focused ConnectED initiative as well as the Presidential Study Directive 9: *Strengthening Military Families,* which states that "The Department of Defense commits to making DOD Education Activity (DODEA) schools a leader in the use of advanced learning technologies that have the potential to significantly improve student performance."

Affected Public: Individuals or households.

Annual Burden Hours: 431.

Number of Respondents: 1292.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Project Tomorrow Speak-Up National Research Project will be open to all teachers, administrators, parents/sponsors of students attending a DoDEA school, as well as students in grades 3–12. The survey does not gather information that would personally identify individuals, and participation in the survey is completely voluntary. The survey is administered through an online, web-based technology. The questions will provide all stakeholders with the opportunity to provide input on their educational use of technology as well as their experience with technology at schools. The data will be incorporated into goals in DoDEA's currently in-process Technology Plan.

The survey results will be used at all levels of the organization to improve programs and services offered to DoDEA's students. The survey results will also be used as an outcome measure to monitor progress on the goals of the new Technology Plan.

Dated: June 19, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–16283 Filed 7–5–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0026]

Agency Information Collection Activities; Proposed Collection; Comment Request: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Washington Headquarters Service (WHS), DOD.

ACTION: 30-day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of an effort to streamline the process to seek feedback from the public on service delivery, WHS has submitted a 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) (44 U.S.C. 3501 et. seq.).

DATES: Comments must be submitted August 7, 2013.

OMB Desk Officer: Ms. Jasmeet Seehra.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Toppings. To request additional information please contact Ms. Toppings, DoD Clearance Officer, at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

SUPPLEMENTARY INFORMATION:

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.

Current Actions: Extension of a previous information collection for DoD's Interactive Customer Evaluation (ICE) system.

Type of Review: Extension.

Affected Public: Individuals or Households, Businesses or Other For-Profit.

Annual Estimates

Expected Annual Number of Activities/Collections: 30,000

Annual Number of Respondents: 322,570

Annual Number of Responses: 322,570

Frequency of Response: On Occasion

Average Burden per Response: 4 min.

Annual Burden Hours: 21505

3-Year Estimates: The 3-Year ceiling for this Generic Collection will be:

Total Expected Number of Activities/Collections: 34,500

Total Number of Respondents: 967,710

Total Number of Responses: 967,710

Frequency of Response: On Occasion

Average Burden per Response: 4 min.

Total Burden Hours: 64,514

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: July 2, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–16269 Filed 7–5–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the National Commission on the Structure of the Air Force

AGENCY: Director of Administration and Management, DoD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense (DoD) announces that the following Federal advisory committee meeting of the National Commission on the Structure of the Air Force ("the Commission") will take place.

DATES: *Date of Open Meeting, including Hearing and Commission Discussion:* Tuesday, July 23, 2013, from 8:00 a.m. to 5:00 p.m. Registration will begin at 8:00 a.m.

ADDRESSES: 2521 South Clark Street, Suite 200, Crystal City, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Moore, Designated Federal Officer, National Commission on the Structure of the Air Force, 1950 Defense Pentagon, Room 3A874, Washington, DC 20301–1950. Email: *dfoafstrucomm@osd.mil.* Desk: (703) 545–9113. Facsimile: (703) 692–5625.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The members of the Commission will hear testimony from individual witnesses and then will discuss the information presented at the hearings.

Agenda

Representatives from defense think tanks, U.S. Air Force leadership, and the Congressional Budget Office have been asked to address the evaluation factors under consideration by the Commission for a U.S. Air Force structure that—(a) meets current and anticipated requirements of the combatant commands; (b) achieves an appropriate balance between the regular and reserve components of the Air Force, taking advantage of the unique strengths and capabilities of each; (c) ensures that the regular and reserve components of the Air Force have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the United States; (d) provides for sufficient numbers of regular members of the Air Force to provide a base of trained personnel from which the personnel of the reserve components of the Air Force could be recruited; (e) maintains a peacetime rotation force to support operational tempo goals of 1:2 for regular members of the Air Forces and 1:5 for members of the reserve components of the Air Force; and (f) maximizes and appropriately balances affordability, efficiency, effectiveness, capability, and readiness. Individual Commissioners will also report their activities, information collection, and analyses to the full Commission.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meeting is open to the public. The building at 2521 South Clark Street; Suite 200, Crystal City, VA 22202 is fully handicap accessible. Several public parking facilities are nearby. All visitors will be asked to show current, picture identification and complete a metal detector scan.

Written Comments: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments to the Commission in response to the stated agenda of the open meeting or the Commission's mission. The Designated Federal Officer (DFO) will review all submitted written statements. Written comments should be submitted to Mrs. Marcia Moore, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author's name, title or affiliation, address, and daytime phone number. All contact information may be found in **FOR FURTHER INFORMATION CONTACT.**

Oral Comments: In addition to written statements, one hour will be reserved for individuals or interested groups to address the Commission on July 23, 2013. Interested oral commenters must summarize their oral statement in writing and submit with their registration. The Commission's staff will assign time to oral commenters at the meeting, for no more than 5 minutes each. While requests to make an oral presentation to the Commission will be honored on a first come, first served basis, other opportunities for oral comments will be provided at future meetings.

Registration: Individuals who wish to attend the public hearing and meeting on Tuesday, July 23, 2013 are encouraged to register for the event in advance with the Designated Federal Officer, using the electronic mail and facsimile contact information found in **FOR FURTHER INFORMATION CONTACT.** The communication should include the registrant's full name, title, affiliation or

employer, email address, and daytime phone number. If applicable, include written comments and a request to speak during the oral comment session. (Oral comment requests must be accompanied by a summary of your presentation.) Registrations and written comments must be typed.

Background

The National Commission on the Structure of the Air Force was established by the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The Department of Defense sponsor for the Commission is the Director of Administration and Management, Mr. Michael L. Rhodes. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2014 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the U.S. Air Force will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the U.S. Air Force in a manner consistent with available resources.

Dated: July 2, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–16277 Filed 7–5–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Deadline Dates for Reports and Other Records Associated With the Free Application for Federal Student Aid (FAFSA), the Federal Pell Grant Program, the William D. Ford Federal Direct Loan Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, and the Iraq and Afghanistan Service Grant Program for the 2013–2014 Award Year

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog Federal Domestic Assistance (CFDA) Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program (FSEOG); 84.033 Federal Work Study Program (FWS); 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program; 84.379 TEACH Grant Program; 84.408 Iraq and Afghanistan Service Grant Program.

SUMMARY: The Secretary announces deadline dates for the receipt of documents and other information from applicants and institutions participating in certain Federal student aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), for the 2013–2014 award year. The Federal student aid programs covered by this deadline date notice are the Federal Pell Grant, William D. Ford Federal Direct Loan (Direct Loan), Teacher Education Assistance for College and Higher Education (TEACH) Grant, and Iraq and Afghanistan Service Grant programs.

These programs, administered by the U.S. Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs.

Deadline and Submission Dates: See Tables A and B at the end of this notice.

Table A—Deadline Dates for Students To Submit a Free Application for Federal Student Aid (FAFSA) and for Students To Ensure the Receipt of Institutional Student Information Records (ISIRs) or Student Aid Reports (SARs) by Institutions for the 2013–2014 Award Year

Table A provides information and deadline dates for receipt of the Free Application for Federal Student Aid (FAFSA), corrections to and signatures for the FAFSA, ISIRs, and SARs, and verification documents.

The deadline date for the receipt of a FAFSA by the Department's Central Processing System is June 30, 2014, regardless of the method that the applicant uses to submit the FAFSA. The deadline date for the receipt of a signature page for the FAFSA (if required), correction, notice of change of address or school, or request for a duplicate SAR is September 20, 2014. Verification documents must be received by the institution no later than 120 days after the student's last date of enrollment for the 2013–2014 award year or September 27, 2014, whichever is earlier. As a reminder, verification is not required for unsubsidized Direct Stafford Loans and PLUS Loans, TEACH Grants, and Iraq and Afghanistan Service Grants.

For all Federal student aid programs, an ISIR or SAR for the student must be received by the institution no later than the student's last date of enrollment for the 2013–2014 award year or September 27, 2014, whichever is earlier. As a reminder, a FAFSA must be submitted for the dependent student for whom a parent has applied for a Direct PLUS Loan.

For all Federal student aid programs except for (1) Direct PLUS Loans that will be made to parent borrowers, and (2) Direct Unsubsidized Loans that will be made to dependent students who have been determined by the institution, pursuant to HEA section 479A(a), to be eligible for such a loan without providing parental information on the FAFSA, the ISIR or SAR must have an official expected family contribution (EFC) and must be received by the institution no later than the earlier of the student's last date of enrollment for the 2013–2014 award year or September 27, 2014.

For a student who is requesting aid through the Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan programs or for a student requesting Direct Subsidized Loans, who does not meet the conditions for a late disbursement under 34 CFR 668.164(g), a valid ISIR or SAR must be received no later than the student's last date of enrollment for the 2013–2014 award year or September 27, 2014, whichever is earlier. For a student meeting the conditions for a late disbursement for these programs, a valid ISIR or SAR must be received no later than the 180 days after the student withdrew or became ineligible or September 27, 2014, whichever is earlier.

In accordance with 34 CFR 668.164(g)(4)(i), an institution may not make a late disbursement of title IV student assistance funds later than 180 days after the date of the institution's determination that the student was no longer enrolled. Table A provides that, to make a late disbursement of title IV student assistance funds, an institution must receive a valid ISIR or valid SAR no later than 180 days after its determination that the student was no longer enrolled, but not later than September 27, 2014.

Table B—Federal Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant Programs Submission Dates for Disbursement Information by Institutions for the 2013–2014 Award Year or Processing Year

Table B provides the earliest submission and deadline dates for institutions to submit Federal Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant disbursement records to the

Department's Common Origination and Disbursement (COD) System and deadline dates for an institution's request for administrative relief if it cannot meet the established deadline for specified reasons.

An institution must submit Federal Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant disbursement records, as applicable, no later than 15 days after making the disbursement or becoming aware of the need to adjust a student's previously reported disbursement. In accordance with 34 CFR 668.164(a), title IV funds are disbursed on the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger, or (b) pays those funds to a student directly. Title IV funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Secretary.

An institution's failure to submit disbursement records within the required timeframe may result in the Secretary rejecting all or part of the reported disbursement. Such failure may result in an audit or program review finding or the initiation of an adverse action, such as a fine or other penalty for such failure, in accordance with subpart G of the General Provisions regulations in 34 CFR part 668.

Other Sources for Detailed Information

We publish a detailed discussion of the Federal student aid application process in the 2013–2014 *Federal Student Aid Handbook* and in the 2013–2014 *ISIR Guide*.

Additional information on the institutional reporting requirements for the Federal Pell Grant Program, Iraq and Afghanistan Service Grant Program, Direct Loan Program, and TEACH Grant Program is contained in the 2013–2014 *Common Origin and Disbursement (COD) Technical Reference*.

You may access these publications by selecting the "iLibrary" link at the Information for Financial Aid Professionals Web site at: *www.ifap.ed.gov*.

Applicable Regulations: The following regulations apply:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Federal Pell Grant Program, 34 CFR part 690.

(3) William D. Ford Direct Loan Program, 34 CFR part 685.

(4) Teacher Education Assistance for College and Higher Education Grant Program, 34 CFR part 686.

FOR FURTHER INFORMATION CONTACT: Ian Foss, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, room 114I1, Washington, DC 20202–5345. Telephone: (202) 377–3681 or by email: *ian.foss@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070g, 1070h, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: July 2, 2013.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

TABLE A—DEADLINE DATES FOR STUDENTS TO SUBMIT A FREE APPLICATION FOR FEDERAL STUDENT AID (FAFSA) AND FOR STUDENTS TO ENSURE THE RECEIPT OF INSTITUTIONAL STUDENT INFORMATION RECORDS (ISIRS) OR STUDENT AID REPORTS (SARS) BY INSTITUTIONS FOR THE 2013–2014 AWARD YEAR

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	Free Application for Federal Student Aid (FAFSA)—"FAFSA on the Web" (original or renewal).	Electronically to the Department's Central Processing System (CPS).	June 30, 2014.
	Signature page (if required)	To the address printed on the signature page.	September 20, 2014.
Student through an Institution.	An electronic FAFSA (original or renewal).	Electronically to the Department's CPS using the "Electronic Data Exchange" (EDE) or "FAA Access to CPS Online".	June 30, 2014.[1]
Student	A paper original FAFSA	To the address printed on the FAFSA or envelope provided with the form.	June 30, 2014.
Student	Electronic corrections to the FAFSA using "Corrections on the Web".	Electronically to the Department's CPS ..	September 20, 2014.[1]
	Signature page (if required)	To the address printed on the signature page.	September 20, 2014.
Student through an Institution.	Electronic corrections to the FAFSA	Electronically to the Department's CPS using the "Electronic Data Exchange" (EDE) or "FAA Access to CPS Online".	September 20, 2014.[1]
Student	Paper corrections to the FAFSA using a SAR, including change of mailing and email addresses and change of institutions.	To the address printed on the SAR	September 20, 2014.
Student	Change of mailing and email addresses, change of institutions, or requests for a duplicate SAR.	To the Federal Student Aid Information Center by calling 1–800–433–3243.	September 20, 2014.

TABLE A—DEADLINE DATES FOR STUDENTS TO SUBMIT A FREE APPLICATION FOR FEDERAL STUDENT AID (FAFSA) AND FOR STUDENTS TO ENSURE THE RECEIPT OF INSTITUTIONAL STUDENT INFORMATION RECORDS (ISIRS) OR STUDENT AID REPORTS (SARS) BY INSTITUTIONS FOR THE 2013–2014 AWARD YEAR—Continued

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	SAR with, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 478A(a), an official expected family contribution (EFC) calculated by the Department's CPS..	To the institution	The earlier of: —The student's last date of enrollment for the 2013–2014 award year; or —September 27, 2014.[2]
Student through CPS.	ISIR with, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 478A(a), an official expected family contribution (EFC) calculated by the Department's CPS..	To the institution from the Department's CPS.	The earlier of: —The student's last date of enrollment for the 2013–2014 award year; or —September 27, 2014.[2]
Student	Valid SAR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans).	To the institution	Except for a student meeting the conditions for a late disbursement under 34 CFR 668.164(g), the earlier of: —The student's last date of enrollment for the 2013–2014 award year; or —September 27, 2014.[2]
Student through CPS.	Valid ISIR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans).	To the institution from the Department's CPS.	
Student	Valid SAR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans).	To the institution	For a student receiving a late disbursement under 34 CFR 668.164(g)(4)(i), the earlier of: —180 days after the date of the institution's determination that the student withdrew or otherwise became ineligible; or —September 27, 2014.[2]
Student through CPS.	Valid ISIR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans).	To the institution from the Department's CPS.	
Student	Verification documents	To the institution	The earlier of:[3] —120 days after the student's last date of enrollment for the 2013–2014 award year; or —September 27, 2014.[2]

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its SAIG mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for Federal Pell Grant and applicants selected for verification, deadline dates for the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs and the Federal Direct Loan Program, but it cannot be later than this deadline date.

TABLE B—FEDERAL PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN, AND TEACH GRANT PROGRAMS SUBMISSION DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2013–2014 AWARD YEAR OR PROCESSING YEAR [1]

Which program?	What is submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
All (Federal Pell Grant, Direct Loan, TEACH Grant, and Iraq and Afghanistan Service Grant programs).	At least one acceptable disbursement record must be submitted for each recipient at the institution.	To the Common Origination and Disbursement (COD) System using the Student Aid Internet Gateway (SAIG) to the COD System using the COD Web site at: *www.cod.ed.gov.*	The earliest disbursement date is January 30, 2013. The earliest submission date for anticipated disbursement information is March 23, 2013. The earliest submission date for actual disbursement information is March 23, 2013, but no earlier than: (a) 7 calendar days prior to the disbursement date under the advance payment method or the Cash Monitoring #1 payment method; or (b) The date of disbursement under the Reimbursement or Cash Monitoring #2 payment methods.

TABLE B—FEDERAL PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN, AND TEACH GRANT PROGRAMS SUBMISSION DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2013–2014 AWARD YEAR OR PROCESSING YEAR [1]—Continued

Which program?	What is submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Federal Pell Grant, Iraq and Afghanistan Service Grant, and TEACH Grant Program.	At least one acceptable disbursement record must be submitted for each recipient at the institution.	To the Common Origination and Disbursement (COD) System using the Student Aid Internet Gateway (SAIG) to the COD System using the COD Web site at: *www.cod.ed.gov.*	Except as provided below, the latest submission date [2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records of disbursements made between January 1, 2013 and March 23, 2013 may be submitted no later than April 7, 2013; or (b) September 30, 2014. *Note:* Downward adjustments after September 30, 2014, of a previously reported and accepted award or disbursement, may be submitted no later than September 30, 2019.
Direct Loan Program	At least one acceptable disbursement record must be submitted for each recipient at the institution.	To the Common Origination and Disbursement (COD) System using the Student Aid Internet Gateway (SAIG) to the COD System using the COD Web site at: *www.cod.ed.gov.*	Except as provided below, the deadline submission date [2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records of disbursements made between January 1, 2013, and March 23, 2013, may be submitted no later than April 7, 2013; or (b) July 31, 2015.
All (Federal Pell Grant, Direct Loan, TEACH Grant, and Iraq and Afghanistan Service Grant programs).	At least one acceptable disbursement record must be submitted for each recipient at the institution. Any disbursement information for submission after the deadline submission date may be submitted only upon approval of a request for an extension. Requests for extensions to the established disbursement submission deadlines may be made for reasons, including, but not limited to:. (a) A program review or initial audit finding under 34 CFR 690.83; (b) A late disbursement under 34 CFR 668.164(g); or (c) Disbursements previously blocked as a result of another institution failing to post a downward adjustment	Via COD Web site at: *www.cod.ed.gov.*	The earlier of: (a) When the institution is fully reconciled and is ready to submit all additional data for the program and the award year; or (b) September 30, 2019.
Federal Pell Grant and Iraq and Afghanistan Service Grant.	Request for administrative relief based on a natural disaster or other unusual circumstance or an administrative error made by the Department.	Via COD Web site at: *www.cod.ed.gov.*	The earlier of: (a) A date designated by the Secretary after consultation with the institution; or (b) February 1, 2015.

TABLE B—FEDERAL PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN, AND TEACH GRANT PROGRAMS SUBMISSION DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2013–2014 AWARD YEAR OR PROCESSING YEAR [1]—Continued

Which program?	What is submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Federal Pell Grant and Iraq and Afghanistan Service Grant.	Request for administrative relief if a student reenters the institution within 180 days after initially withdrawing, and the institution is reporting a disbursement for the student within 15 days of the student's reenrollment but after September 30, 2013[3].	Via COD Web site at: *www.cod.ed.gov.*	The earlier of: (a) 15 days after the student reenrolls; or (b) May 3, 2015.

[1] A COD Processing Year is a period of time in which institutions are permitted to submit Direct Loan records to the COD System that are related to a given award year. For a Direct Loan, the period of time includes loans that have a loan period covering any day in the 2013–2014 award year.

[2] Transmissions must be completed and accepted before 12:00 midnight (Eastern Time) to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[3] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

Note: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 2013–16331 Filed 7–5–13; 8:45 am]
BILLING CODE 4000–01–P]

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: Office of Nonproliferation and International Security, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131a. of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Nuclear Energy Between the Government of the United States of America and the Government of Canada and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community.

DATES: This subsequent arrangement will take effect no sooner than July 23, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Oehlbert, Office of Nonproliferation and International Security, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or email: *Sean.Oehlbert@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns the retransfer of 591,716 kg of U.S.-origin natural uranium hexafluoride (UF6) (67.60% U), 400,000 kg of which is uranium, from Cameco Corporation (Cameco) in Saskatoon, Saskatchewan, Canada, to URENCO in Gronau, Germany. The material, which is currently located at Cameco, will be used for toll enrichment by URENCO at its facility in Gronau, Germany. The material was originally obtained by Cameco from Power Resources Inc., Cameco Resources-Crowe Butte Operation, and White Mesa Mill pursuant to export license XSOU8798.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security of the United States.

Dated: June 21, 2013.

For the Department of Energy.

Anne M. Harrington,

Deputy Administrator, Defense Nuclear Nonproliferation.

[FR Doc. 2013–16287 Filed 7–5–13; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2374–004; ER10–1533–005.

Applicants: Puget Sound Energy, Inc., Macquarie Energy LLC.

Description: Triennial Updated Market Power Analysis in the Northwest Region of Puget Sound Energy, Inc., et. al.

Filed Date: 6/28/13.

Accession Number: 20130628–5138.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER10–2864–001; ER10–2863–001; ER10–2867–001; ER10–2862–001.

Applicants: Las Vegas Cogeneration LP, Las Vegas Cogeneration II, LLC, Valencia Power, LLC, Harbor Cogeneration Company, LLC.

Description: Triennial Market Power Analysis of SGOC Southwest MBR Sellers for the Southwest Region.

Filed Date: 6/28/13.

Accession Number: 20130628–5216.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER10–2994–008; ER10–2822–004; ER10–3158–004; ER10–3159–003; ER10–1720–004; ER12–308–004; ER10–3162–004; ER10–3161–004.

Applicants: Iberdrola Renewables, LLC, Atlantic Renewable Projects II LLC, Dillon Wind LLC, Dry Lake Wind Power, LLC, Dry Lake Wind Power II LLC, Manzana Wind LLC, Mountain View Power Partners III, LLC, Shiloh I Wind Project, LLC.

Description: Updated Market Power Analysis for the Southwest Region of Iberdrola Renewables, LLC, et. al.

Filed Date: 6/28/13.

Accession Number: 20130628–5225.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER11–4436–002; ER10–2473–003; ER10–2502–003; ER10–2472–003; ER11–2424–011.

Applicants: Black Hills Power, Inc., Cheyenne Light Fuel & Power Company, Black Hills/Colorado Electric Utility Co, Black Hills Colorado IPP, LLC, Black Hills Wyoming, LLC.

Description: Updated Market Power Analysis of the Black Hills Corporation Public Utilities for the Northwest Region.

Filed Date: 6/28/13.

Accession Number: 20130628–5181.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER12–1320–001.

Applicants: Desert View Power, Inc.

Description: Desert View Power, Inc. submits tariff filing per 35: Notice of Change in Status to be effective 8/28/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5182.

Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1700–001.

Applicants: KASS Commodities.

Description: KASS Commodities submits tariff filing per 35.17(b): Amended MBR Tariff Filing to be effective 7/8/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5150.

Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1840–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1628R5 Western Farmers Electric Cooperative NITSA NOA to be effective 6/1/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5130.

Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1841–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 607R19 Westar Energy, Inc. NITSA and NOAs to be effective 6/1/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5131.

Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1842–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): BPA Cooperative Communications Agreement 6th Revised to be effective 8/28/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5136.

Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1843–000.

Applicants: Walnut Creek Energy, LLC.

Description: Walnut Creek Energy, LLC submits tariff filing per 35.37: Triennial Market Power Analysis for the Southwest Region to be effective 6/29/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5145.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1844–000.

Applicants: High Lonesome Mesa, LLC.

Description: High Lonesome Mesa, LLC submits tariff filing per 35.37: Triennial Market Power Analysis for the Southwest Region to be effective 6/29/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5146.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1845–000.

Applicants: Midway-Sunset Cogeneration Company.

Description: Triennial Market Power Analysis for the Southwest Region to be effective 6/29/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5148.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1846–000.

Applicants: Coalinga Cogeneration Company.

Description: Triennial Market Power Analysis for the Southwest Region to be effective 6/29/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5149.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1847–000.

Applicants: Watson Cogeneration Company.

Description: Triennial Market Power Analysis for the Southwest Region to be effective 6/29/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5151.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1848–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): Amended Service Agmts for Wholesale Distribution Serv for Devers-Mirage Project to be effective 6/1/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5152.

Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1849–000.

Applicants: Kern River Cogeneration Company.

Description: Triennial Market Power Analysis for the Southwest Region to be effective 6/29/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5156.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1850–000.

Applicants: Mid-Set Cogeneration Company.

Description: Triennial Market Power Analysis for the Southwest Region to be effective 6/29/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5159.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1851–000.

Applicants: New England Power Pool Participants Committee, ISO New England Inc.

Description: New England Power Pool Participants Committee Winter 2013–2014 Reliability Program to be effective 8/27/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5161.

Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1852–000.

Applicants: Sargent Canyon Cogeneration Company.

Description: Triennial Market Power Analysis for the Southwest Region to be effective 6/29/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5168.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1853–000.

Applicants: Sunrise Power Company, LLC.

Description: Triennial Market Power Analysis for the Southwest Region to be effective 6/29/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5172.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1854–000.

Applicants: Sycamore Cogeneration Company.

Description: Triennial Market Power Analysis for the Southwest Region to be effective 6/29/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5176.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1855–000.

Applicants: XO Energy SW, LP.

Description: XO Energy SW, LP Baseline New to be effective 7/1/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5177.

Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1856–000.

Applicants: Citizens Sunrise Transmission LLC.

Description: Annual Operating Cost True-Up Adjustment Informational Filing to be effective 7/1/2013.

Filed Date: 6/28/13.

Accession Number: 20130628–5178.

Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1857–000.

Applicants: Idaho Power Company.

Description: Triennial and Change in Status June 2013 to be effective 8/5/2010.

Filed Date: 6/28/13.

Accession Number: 20130628–5221.

Comments Due: 5 p.m. ET 7/19/13.

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: June 28, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–16326 Filed 7–5–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0181 and EPA–HQ–OPP–2013–0427; FRL–9392–3]

Issuance of Two Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants: Stephen L. Dobson (University of Kentucky) and Phyllom, LLC. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus (88877–*EUP*–1), Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; email address: *bacchus.shanaz@epa.gov;* and

Jeannine Kausch (88347–*EUP*–1), Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8920; email address: *kausch.jeannine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

These actions are directed to the public in general. Although these actions may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by these actions.

B. How can I get copies of this document and other related information?

The docket for these actions, identified by docket identification (ID) numbers EPA–HQ–OPP–2012–0181 (88877–*EUP*–1) and EPA–HQ–OPP–2013–0427 (88347–*EUP*–1) are available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. EUPs

EPA has issued the following EUPs:

1. *88877–EUP–1.* (EPA–HQ–OPP–2012–0181). Issuance. Stephen L. Dobson, University of Kentucky, Department of Entomology, S–225 Ag. Science Center North, Lexington, KY 40546–0091. This EUP allows the release of 30,000 mosquitoes per week for 26 weeks from approximately 52 grams of *Wolbachia pipientis* infected *Aedes polynesiensis* mosquito eggs (containing approximately 0.52 mg *Wolbachia pipientis* microbial active ingredient used as an insecticide on approximately 97 acres to evaluate the suppression of the native *Aedes polynesiensis*). One of the sites will be a control site. The program is authorized only in the United States Territory of Samoa. The EUP is effective from June 15, 2012 to June 20, 2013. Four comments were received in response to the May 8, 2012, notice of receipt in the **Federal Register**, 77 FR 27054, FRL–9342–8. The Agency's and applicant's responses to these comments are included in this docket (Ref. 1 and 2). *References:* 1. U.S. EPA BPPD memorandum (S. Bacchus through K. Nesci to K. Matthews), May 20, 2013; 2. Robert I. Rose, email to S. Bacchus (U.S. EPA BPPD). University of Kentucky's response to Oxitec's comment. June 19, 2012.

2. *88347–EUP–1.* (EPA–HQ–OPP–2013–0427). Issuance. Phyllom, LLC, 922 San Leandro Ave., Suite F, Mountain View, CA 94043. This EUP allows the use of 2,448 pounds of the insecticide, *Bacillus thuringiensis* subspecies *galleriae* strain SDS–502 fermentation solids, spores, and insecticidal toxins, on 1,400 acres of forested areas to evaluate the control of emerald ash borer (*Agrilus planipennis*). The program is authorized only in the States of Illinois, Minnesota, Pennsylvania, and Wisconsin. The EUP is effective from May 8, 2013 to August 31, 2014.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: June 27, 2013.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–16317 Filed 7–5–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9831–4; EPA–HQ–OEI–2012–0806]

Notification of Deletion of System of Records; Office of Criminal Enforcement, Forensics & Training, National Enforcement Investigations Center, Master Tracking System (EPA–46)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is removing the Master Tracking System (EPA–46), published in the **Federal Register** on October 1, 2011,

from its inventory of Privacy Act systems. A personal identifier is no longer used to retrieve the information in the system.

DATES: This notice is effective immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Valerie James, Infrastructure and Project Support Branch Chief, National Enforcement Investigations Center, Office of Criminal Enforcement, Forensics & Training at (303) 462–9051 or Tammy Stein, Infrastructure Section Chief, National Enforcement Investigations Center, Office of Criminal Enforcement, Forensics & Training at (303) 462–9054, P.O. Box 25227, Denver Federal Center, 6th and Kipling, Building 25, Denver, CO 80225.

SUPPLEMENTARY INFORMATION:

General Information

The Master Tracking System, EPA–46, contains information about individuals who are the subject of investigations conducted by the EPA Office of Criminal Enforcement. The investigative reports concern violations of federal environmental statutes and regulations and include information provided by individuals related to the subject violation. Since personal identifiers are no longer used to retrieve the information in this system, the Agency is deleting the Master Tracking System from its inventory of Privacy Act systems.

How can I get copies of this document and other related information?

EPA established a docket for this action under Docket ID No. EPA–HQ–OEI–2012–0806. Copies of the docket materials are available at *www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center 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. The telephone number for the OEI Docket Center is (202) 566–1752.

How can I get electronic access to this document?

You may access this **Federal Register** document electronically under the "**Federal Register**" listings at *www.regulations.gov*.

Dated: June 14, 2013.

Malcolm D. Jackson,

Assistant Administrator and Chief Information Officer.

[FR Doc. 2013–16329 Filed 7–5–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9831–3; 10–2009–0193]

Proposed CERCLA Administrative Cost Recovery Settlement; Double H Pesticide Burial Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed administrative settlement for recovery of response costs incurred for the Double H Pesticide Burial Site in Grandview, Yakima County, Washington. Under this proposed settlement, the settling parties are Double H, L.P.; James T. Hansen; Linda L. Hansen; George W. Higgins; and Edith M. Higgins. The proposed settlement requires the settling parties to pay $370,256.98 to the EPA Hazardous Substance Superfund. Upon payment of this sum to EPA, the settling parties will be released from all other obligations for payments to EPA as well as requirements for maintaining insurance and financial assurance established under an Administrative Settlement Agreement and Order on Consent ("ASAOC"), CERCLA Docket No. 10–2009–0193, signed between the settling parties and the EPA in 2009.

For 30 days following the date of publication of this notice, the EPA will receive written comments relating to the proposed settlement. The EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at the U.S. EPA Region 10 Office, located at 1200 Sixth Avenue, Seattle, Washington 98101.

DATES: Comments must be submitted on or before August 7, 2013.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Region 10 Office, located at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Candace Smith, Regional Hearing Clerk, U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop ORC–158, Seattle, Washington 98101. Comments should reference the Double H Pesticide Burial Site, CERCLA Docket No. 10–2009–0193, and should be addressed to Clifford J. Villa, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Clifford J. Villa, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; (206) 553–1185.

SUPPLEMENTARY INFORMATION: The Double H Pesticide Burial Site is located near Grandview, Yakima County, Washington. The site was the location of unpermitted disposal of pesticide containers and other hazardous substances. Consistent with the terms of the ASAOC, the settling parties conducted an action in 2009 to remove contaminated materials from this site for proper disposal. Work under the ASAOC was conducted subject to EPA oversight. By notice dated January 10, 2011, EPA confirmed the completion of the required work at the Site. As provided by the ASAOC, EPA subsequently submitted a bill to settling parties for reimbursement of EPA's costs for oversight and related expenses at the Site. The total amount of this bill, dated January 15, 2013, was $545,315.59. Of this amount, settling parties paid $73,459.42, and invoked dispute resolution over the remaining costs totaling $472,153.75. After the reviewing the activities comprising these disputed costs, and considering other factors, EPA and the settling parties propose to settle this dispute through a final payment of $370,256.98. Upon payment of this sum to EPA, the settling parties will be released from all other obligations for payments to EPA as well as requirements under the ASAOC for maintaining insurance and financial assurance. Other provisions of the ASAOC, including Section XIX (Covenant Not To Sue By EPA), Section XX (Reservations of Rights By EPA), and Section XXI (Covenant Not To Sue By Respondents) will remain subject to their original terms.

Dated: June 27, 2013.

Chris D. Field,

Manager, Emergency Management Program, U.S. EPA Region 10.

[FR Doc. 2013–16348 Filed 7–5–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012084–002.

Title: HLAG/Maersk Line Gulf-South America Slot Charter Agreement.

Parties: A.P. Moller-Maersk A/S and Hapag-Lloyd AG.

Filing Party: Robert K. Magovern, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would add an additional service string from which Maersk could charter space from Hapag-Lloyd. The parties have requested Expedited Review.

Agreement No.: 012163–002.

Title: MSC/CMA CGM U.S. East Coast—East Coast South America Service Space Charter Agreement.

Parties: Mediterranean Shipping Company S.A. and CMA CGM S.A.

Filing Party: Marc J. Fink, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The Amendment would increase slot allocations and revise vessel size. The Parties request Expedited Review.

Agreement No.: 201166–001.

Title: Marine Terminal Lease and Operating Agreement.

Parties: Broward County, Florida International Terminal, LLC, and Compania Sud Americana de Vapores, S.A. (as guarantor).

Filing Party: Candace J. Running; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive, Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The Amendment updates the terms for the lease and operation of terminal facilities at Port Everglades, Florida.

Agreement No.: 201166–002.

Title: Marine Terminal Lease and Operating Agreement.

Parties: Broward County, Florida International Terminal, LLC, and Compania Sud Americana de Vapores, S.A. (as guarantor).

Filing Party: Candace J. Running; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive, Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The Amendment adds an additional service to the terms of the Agreement.

By Order of the Federal Maritime Commission.

Dated: July 2, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–16294 Filed 7–5–13; 8:45 am]

BILLING CODE 6730–01–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 August 1, 2013.

A Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *United Bankshares, Inc.*, Charleston, West Virginia, and George Mason Bankshares, Inc., Fairfax, Virginia; to acquire 100 percent of the voting shares of Virginia Commerce Bancorp, Inc, and thereby indirectly acquire Virginia Commerce Bank, both of Arlington, Virginia.

B. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Banc Investors, L.L.C.*, Town and Country, Missouri; to acquire 33.32 percent of the voting shares of 1st Advantage Bancshares, Inc., and thereby indirectly acquire 1st Advantage Bank, both of St. Peters, Missouri.

Board of Governors of the Federal Reserve System, July 2, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–16275 Filed 7–5–13; 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 August 1, 2013.

A Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *United Bankshares, Inc.*, Charleston, West Virginia, and George Mason Bankshares, Inc., Fairfax,

Virginia; to acquire 100 percent of the voting shares of Virginia Commerce Bancorp, Inc. and thereby indirectly acquire Virginia Commerce Bank, both of Arlington, Virginia.

B. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Banc Investors, L.L.C.*, Town and Country, Missouri; to acquire 33.32 percent of the voting shares of 1st Advantage Bancshares, Inc., and thereby indirectly acquire 1st Advantage Bank, both of St. Peters, Missouri.

Board of Governors of the Federal Reserve System, July 2, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–16280 Filed 7–5–13; 8:45 am]

BILLING CODE 6210–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Advisory Council on the Standards for Internal Control in the Federal Government

AGENCY: Government Accountability Office.

ACTION: Notice of teleconference meeting.

SUMMARY: The US Government Accountability Office (GAO) is preparing to revise the Standards for Internal Control in the Federal Government, known as the "Green Book," under the authority provided in the Federal Managers' Financial Integrity Act. As part of the revision process, GAO is holding a teleconference with the Green Book Advisory Council (GBAC). The Comptroller General has established the GBAC to provide input and recommendations to the Comptroller General on revisions to the "Green Book." The purpose of the meeting is to discuss proposed revisions to the "Green Book."

DATES: The meeting will be held July 25, 2013 from 10:00 a.m. to 12:00 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: For information on the Green Book Advisory Council and the Standards for Internal Control in the Federal Government please contact Kristen Kociolek, Assistant Director, Financial Management and Assurance telephone 202–512–2989, 441 G Street NW., Washington, DC 20548–0001.

SUPPLEMENTARY INFORMATION: The meeting will be a teleconference held by the US Government Accountability Office. This teleconference meeting follows an initial meeting, on May 20, 2013, of the GBAC. During the May 20, 2013 meeting the GBAC discussed an initial Green Book draft. Members of the public will be provided an opportunity to address the Council with a brief (five-minute) comment period on matters directly related to the proposed update and revision. Any interested person who plans to participate in the teleconference as an observer must contact Kristen Kociolek, Assistant Director, 202–512–2989, prior to July 19, 2013. The toll free call-in number is 1–800–369–1927, and the participant code is 41706.

Authority: 31 U.S.C. 3512 (c), (d).

James Dalkin,

Director, Financial Management and Assurance, U.S. Government Accountability Office.

[FR Doc. 2013–16256 Filed 7–5–13; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Pretest of the Ambulatory Surgery/Procedure Survey on Patient Safety Culture Questionnaire (Ambulatory Surgery SOPS)." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by September 6, 2013.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Pretest of the Ambulatory Surgery/Procedure Survey on Patient Safety Culture Questionnaire (Ambulatory Surgery SOPS)

One setting which has demonstrated tremendous growth both in the volume and complexity of procedures being performed is ambulatory surgical and procedure centers (ASCs). ASCs are defined by the Centers for Medicare & Medicaid Services (CMS) as distinct entities that operate exclusively to provide surgical services to patients who do not require hospitalization and are not expected to need to stay in a surgical facility longer than 24 hours (42 CFR 416.2). Many of the services performed in these facilities extend beyond procedures traditionally thought of as surgery, including endoscopy, and injections to treat chronic pain. Currently, there are over 5,300 Medicare-certified ASCs in the U.S., which represents a greater than 54% increase since 2001. In 2007, Medicare paid for more than 6 million surgeries performed in these facilities at a cost of nearly $3 billion. Recent CMS audits suggest infection control deficiencies in these facilities are widespread. For example, preliminary data from 2011 found that 51 percent of ASCs surveyed had an infection control deficiency; 11 percent were considered very serious deficiencies. These findings are only slightly lower than 2010 audits and a 2008 sample of ASCs in three states.

Given the widespread impact of ASCs on patient safety, the new Ambulatory Surgery/Procedure Survey on Patient Safety Culture (Ambulatory Surgery SOPS) will measure ASC staff perceptions about what is important in their organization and what attitudes and behaviors related to patient safety culture are supported, rewarded, and expected. The survey will help ASCs to identify and discuss strengths and weaknesses of patient safety culture within their individual facilities. They can then use that knowledge to develop appropriate action plans to improve their practices and their culture of patient safety. This survey is designed for use in ASCs that practice all types of surgical procedures including those that require incisions and less invasive or non-surgical procedures such as gastrointestinal procedures or pain management injections.

This research has the following goals:

(1) Develop, cognitively test and modify as necessary the Ambulatory Surgery/Procedure Survey on Patient

Safety Culture Questionnaire (Ambulatory Surgery SOPS); and

(2) Pretest and modify the questionnaire as necessary; and

(3) Make the final questionnaire publicly available.

This study is being conducted by AHRQ through its contractor, Health Research & Educational Trust (HRET), and subcontractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the projects' goals the following activities and data collections will be implemented:

(1) *Cognitive interviews.* One round of cognitive interviews on the Ambulatory Surgery SOPS will be conducted by telephone with 15 respondents from ASCs. The purpose of these interviews is to understand the cognitive processes the respondent engages in when answering a question on the survey and to refine the survey's items and composites. These interviews will be conducted with a mix of physicians, management, nurses, surgical technicians, and administrative staff throughout the U.S. from ASCs with varying characteristics (e.g., size, geographic location, and type of ownership).

(2) *Pretest for the Ambulatory Surgery SOPS.* The draft questionnaire will be pretested with physicians and staff from 40 ASCs. The purpose of the pretest is to collect data for an assessment of the reliability and construct validity of the survey items and composites, allowing for their further refinement. A site-level point of contact (POC) will be recruited in each ASC to manage the data collection at that organization (compile sample information, distribute surveys, promote survey response, etc.).

(3) *Dissemination activities.* The final questionnaire will be made publicly available through the AHRQ Web site. This activity does not impose a burden on the public and is therefore not included in the burden estimates in Exhibit 1.

The information collected will be used to test and improve the draft survey items in the Ambulatory Surgery SOPS. Psychometric analysis will be conducted on the pretest data to examine item nonresponse, item response variability, factor structure, reliability, and construct validity of the items included in the survey. Because the survey items are being developed to measure specific aspects of patient safety culture in the ambulatory surgery setting, the factor structure of the survey items will be evaluated through multilevel confirmatory factor analysis. On the basis of the data analyses, items or factors may be dropped.

The final survey instrument will be made available to the public for use in ASCs to assess their safety culture from the perspectives of their staff. The survey can be used by ASCs to identify areas for patient safety culture improvement. Researchers are also likely to use the survey to assess the impact of ASC's patient safety culture improvement initiatives such as the implementation of a surgical safety checklist. This survey is an expansion of AHRQ's suite of surveys on patient safety culture, which are available on the AHRQ Web site at (*http://www.ahrq.gov/professionals/quality-patient-safety/surveys/index.html*). Those surveys have been used by thousands of hospitals, nursing homes, medical offices, and pharmacies across the U.S. to assess patient safety culture. The Ambulatory Surgery SOPS contains new and revised questions and composites that more accurately apply to the ambulatory surgery setting.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. Cognitive interviews will be conducted with 15 ASC staff (approximately three physicians, six nurses, two medical technicians, two administrative managers, and two administrative assistants) and will take about one hour and 30 minutes to complete. The Ambulatory Surgery SOPS will be completed by 529 ASC staff from 40 facilities (about 13 per facility). Each survey will require approximately 15 minutes to complete. A site-level POC will spend approximately 6 hours administering the Ambulatory Surgery SOPS. The total burden is estimated to be 395 hours annually.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be $16,173 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Cognitive interviews	15	1	1.5	23
Pretest for the Ambulatory Surgery SOPS	529	1	15/60	132
POC Administration of the survey	40	1	6	240
Total	584	na	na	395

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Cognitive interviews	15	23	[a] $46.52	$1,070
Pretest for the Ambulatory Surgery SOPS	529	132	[b] 46.04	6,077
POC Administration of the survey	40	240	[c] 37.61	9,026

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

orm name

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Total	584	395	na	16,173

[a] Based on the weighted average wages for 1 Anesthesiologist (29–1061, $108.35), 2 Surgeons (29–1067, $106.48), 2 Administrative Services Managers (11–3011, $37.61), 6 Registered Nurses (29–1141, $34.23), 2 Medical and Clinical Laboratory Technicians (29–2030, $28.90), 1 Licensed Practical or Licensed Vocational Nurse (29–2061, $21.17), and 1 Office and Administrative Support Workers, All Other (43–9199, $16.92).

[b] Based on the weighted average wages for 150 Registered Nurses, 85 Office and Administrative Support Workers, 85 Medical and Clinical Laboratory Technicians, 70 Surgeons, 50 Licensed Practical/Vocational Nurses, 49 Anesthesiologists, and 40 Administrative Services Managers.

[c] Based on the on-the average wages for 1 Administrative Services Managers.

* National Occupational Employment and Wage Estimates in the United States, May 2012, "U.S. Department of Labor, Bureau of Labor Statistics" (available at *http://www.bls.gov/oes/current/naics4_621400.htm* [for outpatient care setting]

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 25, 2013.

Carolyn M. Clancy,

Director.

[FR Doc. 2013–16076 Filed 7–5–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–13PQ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

DELTA FOCUS Program Evaluation—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Intimate Partner Violence (IPV) is a serious, preventable public health problem that affects millions of Americans and results in serious consequences for victims, families, and communities. IPV occurs between two people in a close relationship. The term "intimate partner" describes physical, sexual, or psychological harm by a current or former partner or spouse. IPV can impact health in many ways, including long-term health problems, emotional impacts, and links to negative health behaviors. IPV exists along a continuum from a single episode of violence to ongoing battering; many victims do not report IPV to police, friends, or family.

The purpose of the DELTA FOCUS (Domestic Violence Prevention Enhancement and Leadership Through Alliances, Focusing on Outcomes for Communities United with States) program is to promote the prevention of IPV through the implementation and evaluation of strategies that create a foundation for the development of practice-based evidence. By emphasizing primary prevention, this program will support comprehensive and coordinated approaches to IPV prevention. Each state domestic violence coalition is required to identify and fund one to two well-organized, broad-based, active local coalitions (referred to as coordinated community responses or CCRs) that are already engaging in, or are at capacity to engage in, IPV primary prevention strategies affecting the structural determinants of health at the societal and/or community levels of the social ecological model. State Domestic Violence Coalitions (SDVCs) must facilitate and support local-level implementation and hire empowerment evaluators to support the evaluation of IPV prevention strategies by the CCRs. SDVCs must also implement and with their empowerment evaluators, evaluate state-level IPV prevention strategies.

CDC seeks OMB approval for one year to collect information electronically from awardees, their CCRs and their empowerment evaluators. Data will be collected in year one and analyzed and disseminated in years two and three. A reinstatement request will be made to collect data in the fourth year of the program. Information will be collected using the DELTA FOCUS Program Evaluation Survey (referred to as DF Survey). The DF survey will collect information about SDVCs satisfaction with CDC efforts to support them; process, program and strategy implementation factors that affect their ability to meet the requirements of the funding opportunity announcement; prevention knowledge and use of the public health approach; and sustainability of prevention activities and successes.

The DF Survey will be completed by 10 SDVC executive directors, 10 SDVC project coordinators, 19 CCR project coordinators, and 10 SDVC empowerment evaluators and take a maximum of 1 hour to complete. The total estimated annualized burden is 49 hours.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TO RESPONDENTS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Domestic Violence Coalition Executive Director	DELTA FOCUS Survey	10	1	1
State Domestic Violence Coalition Project Coordinator	DELTA FOCUS Survey	10	1	1
Coordinated Community Response Project Coordinator	DELTA FOCUS Survey	19	1	1
State Domestic Violence Coalition Empowerment Evaluator	DELTA FOCUS Survey	10	1	1

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–16254 Filed 7–5–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health (MSHRAC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date:
9:00 a.m.–5:45 p.m., July 24, 2013;
9:00 a.m.–12:30 p.m., July 25, 2013.

Place: NIOSH Pittsburgh Office, 626 Cochrans Mill Road, Bldg. 140, Room 101, Pittsburgh, Pennsylvania, 15236 Telephone: (412) 386–5302, Fax: (412) 386–5300.

Status: Open to public, limited only by the space available. The meeting room accommodates approximately 25 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters To Be Discussed: The meeting will focus on safety and health research projects and outcomes in the following areas: improved dissemination of research results through the use of trade literature; a plan for periodically updating the demographic survey of the mining industry; an analysis of the research needs of the stone, sand and gravel sector; reinventing deep vein mining to improve health and safety; the National Academies of Science self-escape study; the total worker health program; an update on Division of Respiratory Disease Studies research; an update on the 1 mg initiative for reducing coal dust exposures; the use of a helmet cam for reducing dust exposures; an update on improved oxygen supplies for self-escape; an update from the National Personal Protective Technology Laboratory; a presentation on emerging lithium batteries; and findings for improving rock dusting in underground coal mines. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jeffery L. Kohler, Ph.D., Designated Federal Officer, MSHRAC, NIOSH, CDC, 626 Cochrans Mill Road, Mailstop P05, Pittsburgh, Pennsylvania 15236, telephone (412) 386–5301, fax (412) 386–5300.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–16184 Filed 7–5–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC, National Center for Environmental Health (NCEH) announces the following meeting of the aforementioned committee:

Times and Dates: 2:00 p.m.–4:30 p.m., July 25, 2013

Place: Teleconference.

Status: The meeting is open to the public, limited only by the conference lines available; the toll free dial-in number is 1–888–554–6025 with a passcode of 2785801.

Purpose: The Committee provides advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The committee also reviews and reports regularly on childhood lead poisoning prevention practices and recommends improvements in national childhood lead poisoning prevention efforts.

Matters To Be Discussed: Agenda items will include the following: Program Update; Presentation of ACCLPP Laboratory Report on "Guidelines for Measuring Lead in Blood Using Point of Care Instruments" and Discussion, ACCLPP Comments, Discussion and Vote on Laboratory Workgroup Report. (In 2009 the Laboratory Workgroup was established and charged by ACCLPP with conducting a review of five laboratory issues. The second of these five issues was to address the need for recommended standards of practice for those using point of care blood lead testing. The report to be presented to the ACCLPP at this meeting is the result of that review.)

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: The public comment period is scheduled on July 25, 2013 from 4:15 p.m. until 4:30 p.m.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–61, Chamblee, Georgia 30345; telephone 770/488–0577, Fax: 770/488–3377; Email; *smalcom@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–16181 Filed 7–5–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response, Board of Scientific Counselors (BSC OPHPR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 1:00 p.m.–3:00 p.m., August 5, 2013.

Place: Web Conference, Audio Bridge Number (USA Toll Free): 866–660–7262, Passcode: 7173682, Web Link: *https://www.livemeeting.com/cc/cdc/join*, Meeting ID: S2M23S.

Status: Open to the public limited only by the conference lines available. Public participants should pre-register for the meeting as described below in "Additional Information for Public Participants".

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the overall strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review of OPHPR scientific programs. For additional information about the Board, please visit: *http://www.cdc.gov/phpr/science/counselors.htm.*

Matters To Be Discussed: Agenda items for this meeting include: (1) A presentation on assessing the cost of preparedness; (2) an update on measuring operational readiness.

Agenda items are subject to change as priorities dictate.

Additional Information For Public Participants: Members of the public that wish to participate in this meeting should pre-register by submitting the following information by email, facsimile, or phone (see Contact Person For More Information) no later than 12:00 noon (EDT) on Friday, July 26, 2013:

- Full Name
- Organizational Affiliation
- Phone Number or Email Address

Contact Person for More Information: Marquita Black, Office of Science and Public Health Practice Executive Assistant, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop D–44, Atlanta, Georgia 30333, Telephone: (404) 639–7325; Facsimile: (404) 639–7977; Email: *OPHPR.BSC.Questions@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–16183 Filed 7–5–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Centers for Disease Control and Prevention Public Health Preparedness and Response Research to Aid Recovery from Hurricane Sandy, Request for Applications (RFA) TP13–001 (republished on *www.Grants.gov* on June 28, 2013), initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates: 12:00 p.m.–5:00 p.m., July 25, 2013 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Centers for Disease Control and Prevention Public Health Preparedness and Response Research to Aid Recovery from Hurricane Sandy, RFA TP13–001", republished on Grants.gov on June 28, 2013.

Contact Person for More Information: Shoukat Qari, D.V.M, Ph.D., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop K72, Atlanta, Georgia 30333, Telephone: (770) 488–8808.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–16185 Filed 7–5–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Board of Scientific Counselors (BSC), Office of Infectious Diseases (OID)

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for possible membership on the BSC, OID. This board consists of 17 experts in fields related to infectious diseases who are selected by the Secretary of the U.S. Department of Health and Human Services (HHS). The board advises the HHS Secretary; the CDC Director; the OID Director; and the Directors of the National Center for Immunization and Respiratory Diseases (NCIRD), the National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), and the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP) concerning strategies, goals, and priorities for the programs and research within the national centers, and monitors the overall strategic direction and focus of OID and the national centers.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishment of the board's mission. Nominees will be selected by the HHS Secretary or designee from authorities knowledgeable in the fields of infectious diseases and related disciplines, including epidemiology, microbiology, bacteriology, virology, parasitology, mycology, immunology, public health, entomology, clinical medicine, and veterinary medicine, as well as from the general public. Members may be invited to serve for terms of up to four years.

The U.S. Department of Health and Human Services policy stipulates that committee membership shall be balanced in terms of professional training and background, points of view represented, and the committee's function. In addition to a broad range of expertise, consideration is given to a broad representation of geographic areas within the U.S., with diverse representation of both genders, ethnic and racial minorities, and persons with disabilities. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government.

Candidates should submit the following items:

- Current *curriculum vitae*, including complete contact information (name,

affiliation, mailing address, telephone number, email address)

- A letter of recommendation stating the qualifications of the candidate.

Nomination materials must be postmarked by July 31, 2013, and sent to: Kim Distel, Office of Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop D10, Atlanta, Georgia 30333, telephone (404) 639–2100.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–16182 Filed 7–5–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ADP & Services Conditions for FFP for ACF.

OMB No.: 0970–0417.

Description: The Advance Planning Document (APD) process, established in the rules at 45 CFR part 95, subpart F, is the procedure by which States request and obtain approval for Federal financial participation in their cost of acquiring Automatic Data Processing (ADP) equipment and services. State agencies that submit APD requests provide the Department of Health and Human Services (HHS) with the following information necessary to determine the States' needs to acquire the requested ADP equipment and/or services:

(1) A statement of need;

(2) A requirements analysis and feasibility study;

(3) A procurement plan

(4) A proposed activity schedule; and,

(5) A proposed budget.

HHS' determination of a State Agency's need to acquire requested ADP equipment or services is authorized at sections 402(a)(5), 452(a)(1), 1902(a)(4) and 1102 of the Social Security Act.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
RFP and Contract	54	1.5	4	324
Emergency Funding Request	5	.1	2	1
Biennial Reports	26	1	1.50	39
Advance Planning Document	34	1.2	120	4,896
Operational Advance Planning Document	20	1	30	600

Estimated Total Annual Burden Hours: 5,862.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–16192 Filed 7–5–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: TANF Quarterly Financial Report, ACF–196.

OMB No.: 0970–0247.

Description: This information collection is authorized under Section 411(a)(3) of the Social Security Act. This request is for renewal of approval to use the Administration for Children and Families' (ACF) 196 form for periodic financial reporting under the Temporary Assistance for Needy Families (TANF) program. States participating in the TANF program are required by statute to report financial data on a quarterly basis. This form meets the legal standard and provides essential data on the use of Federal funds. Failure to collect the data would seriously compromise ACF's ability to monitor program expenditures, estimate funding needs, and to prepare budget submissions required by Congress. Financial reporting under the TANF program is governed by 45 CFR Part 265. This renewal restores columns for reporting Emergency Contingency Fund Grant expenditures.

Respondents: TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196	51	4	10	2,040

Estimated Total Annual Burden Hours: 2,040.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–16220 Filed 7–5–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Funding Announcement Number: HHS–2013–IHS–OUIHP–0001]

Urban Indian Education and Research Organization Cooperative Agreement Program; Office of Urban Indian Health Programs; Announcement Type: New

Catalog of Federal Domestic Assistance Number: 93.193

Key Dates

Application Deadline Date: August 13, 2013.

Review Date: August 19, 2013.

Earliest Anticipated Start Date: September 1, 2013.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive cooperative agreement applications for the Urban Indian Education and Research Organization Cooperative Agreement Program project period September 1, 2013—August 31, 2016. This program is authorized under: the Indian Health Care Improvement Act (IHCIA), as amended, (25 U.S.C. 1652, 1654, and 1655), and Section 301(a) of the Public Health Service Act. This program is described in the Catalog of Federal Domestic Assistance under 93.193.

Background

The Office of Urban Indian Health Programs (OUIHP) oversees the implementation of the IHCIA provisions for making health services more accessible to urban Indians. Pursuant to those authorities, the IHS enters into contracts and grants with urban Indian organizations for the provision of health care and referral services for urban Indians residing in the urban centers. Those services may include (1) alcohol and substance abuse prevention, treatment, rehabilitation and education; (2) mental health needs and assessments; (3) health promotion and disease prevention services; and (4) immunization services. In addition, IHS may enter into contracts with and make grants to urban Indian organizations to employ American Indian and Alaska Natives (AI/AN) trained as Community Health Representatives to provide health care services.

Purpose

The purpose of this IHS cooperative agreement is to fund a national urban Indian organization to act as an education and research partner for OUIHP and urban Indian organizations funded under the Indian Health Care Improvement Act.

II. Award Information

Type of Award

Cooperative Agreement.

Estimated Funds Available

The total amount of funding identified for the current fiscal year, FY 2013, is approximately $800,000. Individual award amounts are anticipated to be between $500,000 and $800,000. Competing and continuation awards issued under this announcement are subject to the availability of funds. In the absence of funding, the IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

One award will be issued under this program announcement.

Project Period

The cooperative agreement project period is September 1, 2013 to August 31, 2016.

Cooperative Agreement

In the Department of Health and Human Services (HHS), a cooperative agreement is administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

Substantial Involvement Description for Cooperative Agreement

A. IHS Programmatic Involvement

In addition to the usual monitoring and technical assistance provided under the cooperative agreement, the IHS/OUIHP responsibilities shall include:

(1) Assurance of the availability of the services of experienced staff to participate in the planning and development of all phases of this cooperative agreement;

(2) Working closely with the IHS Public Affairs Office regarding dissemination of publications completed under the cooperative agreement, and cooperating on the referral of inquiries and request for technical assistance, publications and other information;

(3) Participation in, including the planning of, any meetings conducted as part of project activities;

(4) Assistance in establishing federal interagency and state contacts necessary for the successful completion of tasks and activities identified in the approved scope of work;

(5) Identification of other awardees and organizations with whom the awardee will be asked to develop cooperative and collaborative relationships; and

(6) Assisting the awardee to establish, review and update priorities for activities conducted under the auspices of the cooperative agreement.

B. Grantee Cooperative Agreement Award Activities

Requirements and obligations of the cooperative agreement recipient shall include:

(1) Work collaboratively with the urban Indian organizations funded under the IHCIA;

(2) Respond in a flexible manner to collaborating on occasional short-term projects, in addition to long-term and on-going efforts;

(3) Work closely with the Federal Project Officer when hiring new key project staff and planning/implementing new activities;

(4) Consult with the Federal Project Officer before scheduling any meetings, including project advisory/steering committee meetings, that pertain to the scope of work and at which the Project Officer's attendance would be appropriate;

(5) Provide the Federal Project Officer with the opportunity to review, provide advisory input, and approve at the program level, any publications, audiovisuals and other materials produced, as well as meetings/conferences planned, under the auspices of this cooperative agreement (such review should start as part of concept development and include review of drafts and final products);

(6) Provide the Federal Project Officer with an electronic copy of, or electronic access to, each product developed under the auspices of this project;

(7) Participate in the implementation of awardee performance measures, including the collection of information and administrative data, as designated by the OUIHP;

(8) Ensure that all products developed or produced, either partially or in full, under the auspices of this cooperative agreement are fully accessible and available for free to members of the public;

(9) Identify IHS/OUIHP as a funding sponsor on written products and during meetings and conferences relevant to cooperative agreement activities; and

(10) Acknowledge IHS/OUIHP has uncontested access to any and all data generated under this cooperative agreement, and agree to provide royalty-free, nonexclusive, and irrevocable license for the government to reproduce, publish, or otherwise use any products derived from activities conducted under this cooperative agreement.

(11) Comply with relevant Office of Management and Budget (OMB) Circular provisions regarding lobbying, any applicable lobbying restrictions provided under other law and any applicable restriction on the use of appropriated funds for lobbying activities.

C. Joint Responsibilities of Awardee and IHS/OUIHP

The IHS/OUIHP and the awardee have a joint responsibility to determine which issues will be addressed during the project period, the sequence in which they will be addressed, what approaches and strategies will be used to address them, and how relevant information will be transmitted to specified target audiences and used to enhance project activities and advance the program.

III. Eligibility Information

1. Eligibility

This is a competitive application for an urban Indian organization as defined by 25 U.S.C. 1603(29), which has a Board of Directors that is at least 51 percent urban Indian and can demonstrate the Board of Directors is governed primarily by the urban Indian organizations from diverse locations. The applicant must provide proof of non-profit status, e.g. 501(c)(3), and a listing of Board members including their status as an urban Indian, professions, education degrees, and board appointment terms.

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required such as proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the "Estimated Funds Available" section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

Proof of Non-Profit Status

Organizations claiming non-profit status must submit proof. A copy of the 501(c)(3) Certificate must be received with the application submission by the Application Deadline Date listed under the Key Dates section on page one of this announcement.

An applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS by obtaining documentation confirming delivery (i.e. FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_funding.*

Questions regarding the electronic application process may be directed to Paul Gettys at (301) 443–5204.

2. Content and Form Application Submission

The applicant must include the project narrative in the appendix to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single spaced and not exceed five pages).
- Project Narrative (must be single spaced and not exceed 70 pages).
  - Background information on the organization.
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a Time Frame Chart.
- Letter of Support from Organization's Board of Directors.
- 501(c)(3) Certificate
- Biographical sketches for all Key Personnel.

- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost (IDC) rate agreement (required) in order to receive IDC.
- Copy of Current Approved Organizational Chart.
- Documentation of current Office of Management and Budget (OMB) A–133 required Financial Audit.

Acceptable forms of documentation include:

- Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
- Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate Word document that is no longer than 70 pages and must: be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ x 11″ paper.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they will not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming more familiar with the grantee's activities and accomplishments prior to this grant award. If the narrative exceeds the page limit, only the first 70 pages will be reviewed. The 70-page limit for the narrative does not include the work plan, standard forms, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information

Section 1: Needs—Public Policy, Research and Data, Structured Training and Technical Assistance for UIOs, Education, Public Relations, and Marketing of UIOs

This section outlines the needs of urban Indian organizations. The target population and its unmet health needs must be described and documented in this section. Include socio-cultural determinants of health and health disparities impacting the urban Indian population or communities served and unmet. Demographic data should be used and cited whenever possible to support the information provided. Please discuss any relevant barriers that the project hopes to overcome. This section should help reviewers understand the urban Indian organizations that will be served by the proposed project.

Instructions

Applicants should summarize the need for services including: (1) Public policy, (2) research and data, (3) structured training and technical assistance for urban Indian organizations, and (4) education, public relations and marketing of urban Indian organizations. Describe how the applicant determined it has the administrative infrastructure to provide these services. Explain the previous planning activities the applicant has completed and if the applicant has identified or will establish best-practices or evidence-based practices relative to these services.

(1) Public Policy

A. Applicants should summarize the public policy opportunities and challenges of health care reform on urban Indian organizations: Public Law 111–148, The Patient Protection and Affordable Care Act (ACA) of March 21, 2010; House of Representatives 4872, the Health Care and Education Reconciliation Act of March 23, 2010; and the Indian Health Care Improvement Reauthorization and Extension Act of 2009 (IHCIA).

B. Applicants should identify and align the urban Indian organizations' priorities with the Agency priorities in the context of health care reform. Applicants should describe how the Healthy People 2020 goals and objectives will be incorporated to guide their national health promotion and disease prevention efforts to improve the health of urban Indians. These priorities should align with the urban Indian organizations' budget formulation process that establishes their specific health priorities.

C. Applicants should summarize the need to work with, but not be limited to, the Centers for Medicaid and Medicare Services (CMS), Health Resources and Services Administration (HRSA), Substance Abuse and Mental Health Services Administration (SAMHSA), Centers for Disease Control and Prevention (CDC), and Agency for Healthcare Research and Quality (AHRQ), and states to be able to proactively plan, implement, and evaluate the impact of their activities on urban Indian organizations' priorities for health care reform. The work with AHRQ needs to include specialized focus on the Patient Centered Medical Home (PCMH), which is a model for transforming the organization and delivery of primary care, and its potential to improve the quality, safety, efficiency, and effectiveness of urban Indian health care. The AHRQ PCMH Resource Center is a valuable tool to achieve intended outcomes.

D. Applicants should summarize the need to make certain that public policy program activities are complementary, coordinated and non-duplicative.

E. Applicants should summarize the need to enhance communication, interaction and coordination on health care reform activities by initiating and maintaining partnerships and collaborative relationships with other urban Indian organizations, national Indian Tribal organizations, key state and local health entities, and education and safety networks.

(2) Research and Data

A. Applicants should describe the need to collect and analyze health disparities data, morbidity and mortality data, urban Indian health services costs data and conduct data analyses in order to reduce urban Indian health disparities and identify, improve, evaluate, and document urban Indian organization practice-based and evidence-based best practices.

B. Applicants should summarize the need to have access to cost and cost-benefit information to create accurate reasonable annual urban Indian health budgets.

C. Applicants should describe coordination with IHS funded Tribal and Urban Epidemiological Centers, the CDC, and the IHS to reduce and/or eliminate barriers that prevent access to data.

(3) Structured Training and Technical Assistance for Urban Indian Organizations

A. Applicants should describe the need for education, technical support and training to urban Indian organizations as they implement health care reform and work with the Health Insurance Marketplace to implement,

sustain and improve access to quality health care services for urban Indians.

B. Applicants should describe the need for training and technical assistance to support urban Indian organization administration: (1) Board of directors: roles and responsibilities, criteria to guide medical staff credentialing and privileging, and ensure quality and patient safety; (2) develop business plans; (3) enhance revenue and third-party billing; (4) achieve and maintain program accreditation; (5) acquire state licensure, PCMH certification or other state credentialing; and (6) enrollment in Medicaid, Medicare, State Children's Health Insurance Programs, and qualified health plans through an Exchange, whether State-based, Federally-facilitated, or a Partnership arrangement.

(4) Education, Public Relations and Marketing of Urban Indian Organizations

A. Applicants should summarize the need to market the urban Indian organizations through development of national, regional and local marketing strategies and campaigns.

B. Applicants should describe the need for enhanced communication among local private and non-profit health care entities and county and state health departments.

C. Applicants should describe their communications strategy and collaborative activities.

Part B: Program Planning and Evaluation

Section 1: Program Plans—Methodology, Project Goals and Objectives, Project Logic Model, Work Plan, Resolution of Challenges, and Impact

Methodology

Propose methods that will be used to meet each of the previously-described program requirements and expectations in this funding opportunity announcement. As appropriate, include development of effective tools and strategies for ongoing staff training, outreach, collaborations, clear communication, and information sharing/dissemination with efforts to involve urban Indian organization staff and patients, Federal entities, and state health personnel.

Goals and Objectives

Applicants should state the goals for the proposed project. Project goals, which should be national in scope, describe the desired long-term outcomes. Project goals need to align with and incorporate the Healthy People 2020 benchmarks and be monitored to encourage collaborations, empower individuals toward making informed health decisions, and measure the impact of prevention activities to improve the health of urban Indians.

These goals are broad statements that establish the overall direction for, and focus of, a project. They serve as the foundation for developing project objectives.

Applicants should provide at least one specific, achievable, measurable, time-framed outcome objective for each proposed project goal. Outcome objectives are specific statements of positive change to be effected in order to achieve the goals of the project. That is, outcome objectives are measurable steps, or stepping stones, for reaching goals. They form the basis for monitoring progress toward achieving project goals and setting targets for accountability. Each objective should be specific; stated in measurable terms; be achievable within a given time frame and available resources; be relevant to and congruent within the larger project goal; and include a specific time frame for achievement. Collectively, the proposed outcome objectives should frame the set of national outcomes that the applicant wants to achieve in meeting project goals.

Instructions

1. Applicants should describe proposed approaches and activities for achieving project goals and objectives. Methods or activities should be presented for addressing each focus of intent for the four service areas for which application is made, as outlined in Part A. Program Information Needs. In particular, applicants should demonstrate that the proposed methodological approaches are national in scope and contribute to increased capacity within the urban Indian health system.

2. Applicants should describe the specific activities necessary to carry out each methodological approach. Applicants should take into consideration the logic, technical soundness, feasibility, creativity and innovativeness, potential utility, and national applicability of the activities it proposes.

3. The description of the project methodology should extend across the three years of the project effort.

4. Applicants should develop a project logic model, a systematic diagram, that links anticipated outcomes with the project's activities/processes and theoretical assumptions. It should include the following basic components: Resources/inputs, activities, outputs, outcomes, and impacts. (A useful resource is the logic model Development Guide, W.K. Kellogg Foundation, 2004, available at *http://www.wkkf.org*). The project logic model should be included as part of the application appendix.

5. Evidence should be provided that the approaches and activities can reasonably be expected to be effective. Literature relevant to the methodology may be cited as appropriate.

Work Plan

Describe the activities or steps that will be used to achieve each of the activities proposed during the entire project period in the Methodology section. Use a time line that includes each activity and identifies responsible staff. As appropriate, identify meaningful support and collaboration with key stakeholders in planning, designing and implementing all activities, including development of the application and, further, the extent to which these contributors reflect the cultural and geographic diversity of the urban Indian and urban Indian organization locations.

Instructions

1. Applicants should include a Work Plan that describes the sequence of specific activities and steps that will be used to carry out each proposed methodological approach. Applicants should explicitly describe who will conduct each activity, as well as when, where, and how each activity will be carried out.

2. A detailed time line of proposed project activities should be developed by the applicant, and attached as an appendix. The time line should link activities to project objectives and should cover the three years of the project period.

3. Applicants should describe an efficient and effective plan for managing the project, including its personnel and resources.

4. Applicants should describe an effective plan for monitoring and tracking project activities.

Resolution of Challenges

Discuss challenges that are likely to be encountered in designing and implementing the activities described in the work plan sections, as well as approaches that will be used to address such challenges.

Instructions

Applicants should discuss challenges, including both opportunities and barriers, that are likely to be

encountered in designing and implementing the activities described in the Description of Methodology and Work Plan sections, as well as approaches that will be used to address such challenges.

Impact

This section of the Project Narrative discusses the proposed project's national audiences that the applicant plans to engage, and how project activities will yield materials, resources and other benefits for them.

Instructions

1. Applicants should explain how the proposed project's products and results will have a national scope and applicability.

2. Applicants should provide an inclusive description of its national target audiences as well as its proposed strategies for reaching these audiences. The plan should include, but not be limited to, electronic and Internet capacity.

3. Applicants should describe how and to what extent the proposed project activities will directly improve leadership within the urban Indian health services and systems being targeted, and contribute to improve health status among urban Indians. The applicant should include a description of how it intends to mobilize its audiences to learn from and actually use the materials, products and resources it has developed to address the four program requirements identified in Part A. Program Information Needs.

Section 2: Program Evaluation

Evaluation and Technical Support Capacity

Describe current experience, skills, and knowledge, including individuals on staff, materials published, and previous work of a similar nature. As appropriate, describe the data collection strategy to collect, analyze and track data to measure process and impact/outcomes, with urban Indian organizations, Tribes, national Indian organizations and states and explain how the data will be used to inform program development and service delivery.

Evaluation and self-assessment have vital importance for quality improvement and assessing the value-added contribution of urban Indian education and research investments. Consequently, cooperative agreement projects are expected to incorporate a carefully designed and well-planned evaluation protocol capable of demonstrating and documenting measurable progress toward reaching the project's stated goals through achievement of the project's measurable objectives. The evaluation protocol should be based on a clear rationale relating the identified needs of the target population with project goals, award activities, and the evaluation measures. Whenever possible, the measurements of progress toward goals should focus on outcomes and results over which the project has some degree of influence, rather than on intermediate measures such as process or outputs. However, it is understood that efforts similar to the categories of the Urban Indian Education and Research Organization Cooperative Agreement program frequently focus on intermediate measures as part of their evaluation. Applicants are encouraged to incorporate the expertise of a professional evaluation specialist (either on-staff or as a consultant) at the design stage of the project methodology.

Instructions

1. Applicants should provide a well-conceived and logical plan for assessing the achievement of the project's process and outcome objectives and for evaluating changes in the specific problems and contributing factors. The evaluation plan should focus primarily on outcomes over which the project has influence and that have the capacity to produce meaningful data on an annual basis.

2. Applicants should develop at least two (2) performance measures by which it will track its progress over time. A performance measure is a quantifiable indicator of progress and achievement that includes outcome, output, input, efficiency, and explanatory indicators. It can measure such domains as productivity, effectiveness, quality and timeliness (Government Accounting Standards Board, *http://www.seagov.org/aboutpmg/performance_measurement.shtml*).

Part C: Program Report

Section 1: Describe major accomplishments over the last 24 months. Please identify and describe significant program achievements associated with the delivery of quality health services. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the last 12 months. Please identify and summarize recent major health related project activities of the work done during the project period.

B. Budget Narrative: This narrative must describe the budget requested and match the scope of work described the project narrative. The budget narrative should not exceed five pages.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 12:00 a.m., midnight Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. The applicant will be notified by the DGM via email of this decision.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Paul Gettys, DGM (*Paul.Gettys@ihs.gov*) at (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained (see Section IV.6 below for additional information). The waiver must be documented in writing (emails are acceptable), *before* submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGM. Once a waiver request has been approved, the applicant will receive a confirmation of approval and the mailing address to submit the application. Paper applications that are submitted without a waiver from the Acting Director of DGM will not be reviewed or considered further for funding. The applicant will be notified via email of this decision by the Grants Management Officer of DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant.
- IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Find Grant Opportunities" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If an applicant receives a waiver to submit paper application documents, please follow the rules and time lines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates section on page one of this announcement.

Applicants that do not adhere to the time lines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov*. Please include a clear justification for the need to deviate from the standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for SAM and Grants.gov could take up to fifteen working days.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this Funding Announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download the application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the OUIHP will notify the applicant that the application has been received.
- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access it through *http://fedgov.dnb.com/webform*, or to expedite the process, call (866) 705–5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended ("Transparency Act"), to report information on subawards. Accordingly, all IHS grantees must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration (CCR) and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov*.

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_policy_topics*.

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 70-page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See "Multi-year Project Requirements" at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 70 points is required for funding. Points are assigned as follows:

1. Criteria

A. Program Information and Need for Assistance (20 points)

In the context of Healthy People 2020: (1) The target population and its unmet health needs are described and documented; (2) Socio-cultural determinants of health and health disparities impacting the urban Indian population or communities served are identified and described; (3)

Demographic data is used and cited to support the information provided; (4) Relevant barriers that the project hopes to overcome are discussed; (5) Information provided helps reviewers understand the urban Indian organizations that will be served by the proposed project; (6) Describe how the applicant determined it has the administrative infrastructure to provide the four program requirements: public policy, research and data, structured training and technical assistance and for urban Indian organizations, and education, public relations and marketing of urban Indian organizations; and (7) Explain previous planning activities the applicant has completed and if the applicant has identified or will establish best-practices or evidence-based practices relative to each of the four program requirements.

(1) Public Policy

A. Summarize the public policy opportunities and challenges of health care reform on urban Indian organizations.

B. Identify and align the urban Indian organizations' priorities with the Agency priorities in the context of health care reform. Describe how the Healthy People 2020 goals and objectives are incorporated to guide national health promotion and disease prevention efforts. The priorities should align with the urban Indian organizations' budget formulation process that establishes their specific health priorities.

C. Summarize the need to work with the HHS Operating Divisions including CMS, HRSA, SAMHSA, CDC, AHRQ, and states to proactively plan, implement, and evaluate the impact of activities on urban Indian organizations' priorities for health care reform.

D. Summarize the need to make certain that public policy program activities are complementary, coordinated and non-duplicative.

E. Summarize enhanced communication, interaction, and coordination of health care reform activities, such as the PCMH model, by initiating and maintaining partnerships and collaborative relationships with national Indian Tribal organizations, key state and local health entities, and education and safety networks.

(2) Research and Data

F. Describe the need to collect and analyze health disparities data, morbidity and mortality data, urban Indian health services costs data and conduct data analyses in order to reduce urban Indian health disparities and identify, improve, evaluate, and document urban Indian organizations' practice-based and evidence-based best practices.

G. Summarize the need to have access to cost and cost-benefit information to create accurate reasonable annual urban Indian health budgets.

H. Describe coordination with IHS funded Tribal and Urban Epidemiological Centers, the CDC, and the IHS to reduce and/or eliminate barriers that prevent access to data.

(3) Structured Training and Technical Assistance for Urban Indian Organizations

I. Describe the need for education, technical support and training to urban Indian organizations as they implement health care reform and work with the Health Insurance Marketplace to implement, sustain and improve access to quality health care services for urban Indians.

J. Describe the need for training and technical assistance to support urban Indian organization administration: (1) Board of directors: roles and responsibilities, criteria to guide medical staff credentialing and privileging, and ensure quality and patient safety, (2) develop business plans, (3) enhance revenue and third-party billing, (4) achieve and maintain program accreditation, (5) acquire state licensure, PCMH certification or other state credentialing, and (6) enrollment in Medicaid, Medicare and SHCIP programs.

(4) Education, Public Relations and Marketing of Urban Indian Organizations

K. Summarize the need to market the urban Indian organizations through development of national, regional and local marketing strategies and campaigns.

L. Describe the need for enhanced communication among local private and non-profit health care entities and county and state health departments.

M. Describe communications strategy and collaborative activities.

B. Project Objective(s) and Approach (40 points)

Program Plans—Goals and Objectives, Methodology, Project Logic Model, Work Plan, Resolution of Challenges, and Impact

Describe methods that will be used to meet each of the four program requirements and expectations in this funding opportunity announcement. Address development of effective tools and strategies for ongoing staff training, outreach, collaborations, clear communication, and information sharing/dissemination with efforts to involve urban Indian organization staff and patients, Federal entities, and state health personnel.

Goals and Objectives

State the goals for each program requirement. Project goals are national in scope, describe the desired long-term outcomes for each program requirement, and align with and incorporate the Healthy People 2020 benchmarks.

Provide at least one specific, achievable, measurable, time-framed outcome objective for each proposed project goal. Each objective identified is specific, stated in measurable terms, achievable within a specified time frame and the available resources, is relevant to and congruent within the larger project goal; and includes a specific time frame for achievement. The proposed outcome objectives frame the set of national outcomes the applicant wants to achieve in meeting project goals.

Methodology

1. Applicant described proposed approaches and activities for achieving project goals and objectives. Methods or activities are presented for addressing each focus of intent for each of the four program requirements outlined in Part A. Program Information Needs. Applicant demonstrates that the proposed methodological approaches are national in scope and contribute to increased capacity within the urban Indian health system.

2. Applicant described the specific activities necessary to carry out each methodological approach. Applicant demonstrated consideration of logic, technical soundness, feasibility, creativity and innovativeness, potential utility, and national applicability of the activities it proposed.

3. The description of the project methodology extends across the three years of the project effort.

4. The applicant developed a project logic model, a systematic diagram, that links anticipated outcomes with the project's activities/processes and theoretical assumptions. It includes the following basic components: Resources/inputs, activities, outputs, outcomes, and impacts. The project logic model is included as part of the application appendix.

5. Applicant provided evidence that its approaches and activities can reasonably be expected to be effective. Literature relevant to the methodology is cited as appropriate.

Work Plan

A work plan is included that describes the sequence of specific activities and steps that will be used to carry out each proposed methodological approach. The applicant explicitly described who will conduct each activity, as well as when, where, and how each activity will be carried out. A detailed time line of proposed project activities was developed and included in the appendix. The time line links activities to project objectives and covers the three years of the project period. The applicant described an efficient and effective plan for managing the project, including its personnel and resources. The applicant described an effective plan for monitoring and tracking project activities.

Resolution of Challenges

The applicant identified and discussed challenges, including both opportunities and barriers, that are likely to be encountered in designing and implementing the activities described in the Description of Methodology and Work Plan sections, as well as approaches that will be used to address such challenges.

Impact

The applicant explained how the proposed project's products and results will have a national scope and applicability. The applicant provided an inclusive description of its national target audiences as well as its proposed strategies for reaching these audiences. The plan includes, but is not limited to, electronic and Internet capacity. The applicant described how and to what extent the proposed project activities will directly improve leadership with the urban Indian health services and systems being targeted, and contribution to improve health status among urban Indians. The applicant included a description of how it intends to mobilize its audiences to learn from and actually use the materials, products and resources it has developed to address the four services areas identified in A. Program Information needs.

C. Program Evaluation and Technical Support Capacity (15 points)

The applicant provided a well-conceived and logical plan for assessing the achievement of the project's process and outcome objectives and for evaluating changes in the specific problems and contributing factors. The evaluation plan focuses primarily on outcomes over which the project has influence and that have the capacity to produce meaningful data on an annual basis.

The applicant developed at least two (2) performance measures by which it will track its progress over time. The performance measures are quantifiable indicators of progress and achievement that include outcome, output, input, efficiency, and explanatory indicators. The performance measures can be measured by domains including productivity, effectiveness, quality and timeliness.

D. Organizational Capabilities, Key Personnel and Qualifications (15 points)

Organizational Capabilities

The applicant identified its credibility including how long and why the organization exists, accomplishments and impact, size and characteristics of its constituency, its funding sources and their positive comments on the organization's work, and results of internal and external evaluations of the programs. Include a listing of the current Board of Directors (the listing of Board members includes their status as an urban Indian, professions, education degrees, and board appointment terms) and discuss the organization's administrative capacity including OMB Circular administrative requirements for non-profit organizations, fiscal and human resources policies and procedures and audit reporting.

Key Personnel and Qualifications

Identify current staff and new staff education, experience, skills, and knowledge; materials published; and previous work of a similar nature. Describe data collection strategy to collect, analyze and track data to measure process and impact/outcomes with urban Indian organizations, Tribes, national Indian organizations and states and explain how the data will be used to inform program development and service delivery.

E. Categorical Budget and Budget Justification (10 points)

The applicant was specific and provided an itemized categorical budget and a clear succinct budget narrative justification to support the scope of work described in the project narrative.

Multi-Year Project Requirements (if applicable)

Projects requiring second and third years must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. Required information on multi-years should be included as an appendix.

Appendix Items

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart(s) highlighting proposed project staff and their supervisors as well as other key contacts within the organization and key community contacts.
- Additional documents to support narrative (i.e. data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. Applicants will be notified by DGM, via email, to outline minor missing components (i.e., signature on the SF–424, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation. If an applicant receives less than a minimum score, it will be considered to be "Disapproved" and will be informed via email by the IHS program office of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to each disapproved applicant. The summary statement will be sent to the Authorized Organizational Representative (AOR) that is identified on the face page (SF–424), of the application within 30 days of the completion of the Objective Review.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity

that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 70, and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC outlining the weaknesses and strengths of their application submitted. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be "Approved", but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2013, the approved application maybe reconsidered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS Grants Management Official announcing to the Project Director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

- 45 CFR Part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, and other Non-profit Organizations.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- 2 CFR Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. Audit Requirements:

- OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *http://www.doi.gov/ibc/services/Indirect_Cost_Services/index.cfm*. For questions regarding the indirect cost policy, please call (301) 443–5204 to request assistance.

4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) the imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Reports must be submitted electronically via GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Division of Payment Management, HHS at: *http://www.dpm.psc.gov*. It is recommended that you also send a copy of your FFR (SF–425) report to your Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: the Progress Reports and Federal Financial Report.

C. Federal Subaward Reporting System (FSRS)

This award may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR Part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 subaward obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) the project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 subaward obligation dollar threshold during any specific reporting

period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the Grants Management Grants Policy Web site at: *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_policy_topics.*

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Phyllis Wolfe, Director, Office of Urban Indian Health Programs, 801 Thompson Avenue, Suite 200, Rockville, MD 20852, Phone: (301) 443–1631, Email: *phyllis.wolfe@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Patience Musikikongo, Grants Management Specialist, Division of Grants Operations, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, Phone: (301) 443–5204, Email: *patience.musikikongo@ihs.gov.*

3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, Phone: (301) 443–5204, Fax: (301) 443–9602, Email: *paul.gettys@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: June 28, 2013.

Yvette Roubideaux,

Acting Director, Indian Health Service.

[FR Doc. 2013–16270 Filed 7–5–13; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee; AIDS.

Date: July 25–26, 2013.

Time: July 25, 2013, 2:00 p.m. to 05:00 p.m., Central Time.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott Chicago River North Hotel, 30 East Hubbard, Chicago, IL 60611.

Time: July 26, 2013, 8:30 a.m. to 12:00 p.m., Central Time.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott Chicago River North Hotel, 30 East Hubbard, Chicago, IL 60611.

Contact Person: Vasundhara Varthakavi, Ph.D., Scientific Review Officer, Scientific Review Program, NIH/NIAID/DEA/ARRB, 6700 B Rockledge Drive, Room 3256, Bethesda, MD 20892–7616, 301–451–1740, *varthakaviv@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; IAM Review Meeting.

Date: July 29–31, 2013.

Time: 8:00 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, (Virtual Meeting).

Contact Person: Maryam Feili-Hariri, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–3243, *haririmf@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: July 1, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16234 Filed 7–5–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 materials, 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 Drug Abuse Special Emphasis Panel; NIH Summer Research Experience Programs (R25).

Date: July 19, 2013.

Time: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4245, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–451–4530, *el6r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 2, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16339 Filed 7–5–13; 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; Integrated Preclinical/Clinical AIDS Vaccine Development Program (U19).

Date: July 30–31, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nancy Vazquez-Maldonado, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–3253, *nvazquez@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16235 Filed 7–5–13; 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; Neuropsychiatric and Neuroimmunologic Studies.

Date: July 17, 2013.

Time: 3:00 p.m. to 5:00 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: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@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.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR MH14–141: Revision Applications for Research on Assessing the Role of Stigma in HIV Prevention and Care (R34).

Date: July 17, 2013.

Time: 12:00 p.m. to 5:00 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: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@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.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–007: Early-Stage Pharmacological Validation of Novel Targets and Accompanying Pre-Therapeutic Leads for Diseases of Interest to the NIDDK.

Date: July 30, 2013.

Time: 10:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Bleasdale, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301–435–4514, *bleasdaleje@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 11–044: Indo-US Collaboration on Low Cost Medical Devices.

Date: July 31–August 1, 2013.

Time: 7:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ping Fan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA: Endocrinology, Metabolism, Nutrition, and Reproduction.

Date: July 31, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuropharmacology.

Date: July 31, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7850, Bethesda, MD 20892, 301–435–1220, *rc218u@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: July 1, 2013.

Michelle Trout,

OFACP Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16236 Filed 7–5–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-Up Exclusive Commercialization License: The Development of a Circularly Permuted IL4-Targeted Pseudomonas Exotoxin A (cpIL4–PE38KDEL) for the Treatment of Cancers and Urological Disorders

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209 and 37 CFR Part 404, indicates that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a start-up exclusive commercialization license to practice the inventions embodied in:

(a) Technology families E–047–1994/0 and E–047–1994/1, including U.S. Patent 5,635,599 entitled "Proteins Comprising Circularly Permuted Ligands" [HHS Ref. E–047–1994/0–US–01], PCT Application PCT/US95/04468 entitled "Circularly Permutated Ligands and Circularly Permuted Chimeric Molecules" [HHS Ref. E–047–1994/0–PCT–02], European Patent 0754192 entitled "Proteins Comprising Circularly Permuted Ligand" [HHS Ref. E–047–1994/0–EP–15, validated in Austria, Belgium, France, Italy, Liechtenstein, The Netherlands, Spain, Switzerland and the United Kingdom], Canadian Patent 2187283 entitled "Proteins Comprising Circularly Permuted Ligands" [HHS Ref. E–047–1994/0–CA–14], Australian Patent 694211 entitled "Proteins Comprising Circularly Permuted Ligands" [HHS Ref. E–047–1994/0–CA–14], and U.S. Patent 6,011,002 entitled "Circularly Permutated Ligands and Circularly Permuted Chimeric Molecules" [HHS Ref. E–047–1994/1–US–01];

(b) Technology family E–021–2010/0, including U.S. Patent Application 61/105,408 entitled "Targeted Cargo Protein Combination Therapy" [HHS Ref. E–021–2010/0–US–01] and U.S. Patent Application 12/579,281 entitled "Targeted Cargo Protein Combination Therapy" [HHS Ref. E–021–2010/0–US–02];

and all related continuing and foreign patents/patent applications for these technology families, to Medicenna Therapeutics, Inc. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective start-up exclusive commercialization license territory may be worldwide, and the field of use may be limited to:

The treatment of cancers and urological disorders that express the IL4 receptor on their cell surface by using cpIL4–PE38KDEL.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 23, 2013 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated start-up exclusive commercialization license should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; Email: *lambertsond@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: Targeted toxins are fusion proteins which have been designed to direct therapeutic agents to specific diseased cells. Targeted toxins comprise two primary domains: a targeting domain and a toxin domain (the therapeutic agent). Diseased cells are targeted through the interaction of the targeting domain with a protein that is preferentially expressed on the cells. Once targeted to the cells, the toxin domain is able to exert its cytotoxic activity and kill the specific cell without affecting cells which do not express the target. Since there are a number of cell surface proteins that are preferentially expressed on diseased cells, targeted toxins are potential therapeutic candidates in the treatment of several diseases such as cancer and urological disorders.

The specific targeted toxins for which this start-up exclusive license may be granted comprise a targeting domain which contains a circularly permuted interleukin 4 (cpIL4) ligand, which binds to the IL4 receptor. The IL4 receptor is a cell surface protein that is preferentially expressed on several types of cancer cells and cells associated with urological disorders. By linking cpIL4 to the *Pseudomonas* extoxin A variant PE38KDEL, it is possible to selectively kill the IL4 receptor-expressing cells, leaving non-diseased cells alone. This can result in an effective therapeutic strategy with fewer side effects than a non-targeted therapy.

The prospective start-up exclusive commercialization license is being considered under the small business initiative launched on 1 October 2011, and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The prospective start-up exclusive license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404 within fifteen (15) days from the date of this published notice.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated start-up exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dates: July 1, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–16237 Filed 7–5–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0574]

Merchant Marine Personnel Advisory Committee: Intercessional Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Working Group Meeting.

SUMMARY: A working group of the Merchant Marine Personnel Advisory Committee (MERPAC) will meet to work on Task Statement 82, entitled "The review and submittal of recommendations for proposed revisions to forms CG–719K, Merchant Mariner Credential Medical Evaluation Report and CG–719K/E, Merchant Mariner Evaluation of Fitness for Entry Level Ratings." This meeting will be open to the public.

DATES: A MERPAC working group will meet on July 24, 2013, and July 25, 2013, from 8 a.m. until 4 p.m. Please note that the meeting may adjourn early if all business is finished. Written comments to be distributed to working group members and placed on MERPAC's Web site are due by July 10, 2013.

ADDRESSES: The working group will meet at the Jemal Building of U.S. Coast Guard Headquarters, Room 10–0718, 1900 Half St. SW., Washington, DC

20593. Attendees will be required to provide a picture identification card and pass through a magnetometer in order to gain admittance to the Jemal Building. Visitors should also arrive at least 30 minutes in advance of the meeting in case of long lines at the entrance.

For further information about the Coast Guard facilities or services for individuals with disabilities or to request special assistance, contact Mr. Davis Breyer at (202) 372–1445 or *davis.j.breyer@uscg.mil.*

To facilitate public participation, we are inviting public comment on the issues to be considered by the working group, as listed in the "Agenda" section below. Comments must be submitted in writing on or before July 10, 2013, and must be identified by Docket No. USCG–2013–0574 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* enter the docket number in the "Search" field and follow instructions on the Web site.

Public oral comment periods will be held during the working group meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public oral comment periods may end before the prescribed ending time following the last call for comments. Contact Davis Breyer as indicated above no later than July 10, 2013 to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. Davis Breyer, Alternate Designated Federal Officer of MERPAC, telephone 202–372–1445. If you have any questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Title 5, United States Code (Pub. L. 92–463).

MERPAC is an advisory committee authorized under section 871 of the Homeland Security Act of 2002, Title 6, United States Code, section 451, and chartered under the provisions of the FACA. The Committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security (DHS) through the Commandant of the Coast Guard and the Director of Commercial Regulations and Standards on matters relating to personnel in the U.S. merchant marine, including but not limited to training, qualifications, certification, documentation, and fitness standards. The Committee will advise, consult with, and make recommendations reflecting its independent judgment to the Secretary.

A copy of all meeting documentation, including the Task Statement, is available at *https://homeport.uscg.mil* by using these key strokes: Missions; Port and Waterways Safety; Advisory Committees; MERPAC; and then use the announcements key. Alternatively, you may contact Mr. Breyer as noted in the **ADDRESSES** section above.

Agenda

Day 1

The agenda for the July 24, 2013, working group meeting is as follows:

(1) Review forms CG–719K, Merchant Mariner Credential Medical Evaluation Report and CG–719K/E, Merchant Mariner Evaluation of Fitness for Entry Level Ratings for possible revision;

(2) Public comment period;

(3) Discuss and prepare proposed recommendations for the full committee to consider with regards to Task Statement 82, entitled "The review and submittal of recommendations for proposed revisions to forms CG–719K, Merchant Mariner Credential Medical Evaluation Report and CG–719K/E, Merchant Mariner Evaluation of Fitness for Entry Level Ratings"; and

(4) Adjournment of meeting.

Day 2

The agenda for the July 25, 2013, working group meeting is as follows:

(1) Continue discussion on proposed recommendations;

(2) Public comment period;

(3) Discuss and prepare final recommendations for the full committee to consider with regards to Task Statement 82, entitled "The review and submittal of recommendations for proposed revisions to forms CG–719K, Merchant Mariner Credential Medical Evaluation Report and CG–719K/E, Merchant Mariner Evaluation of Fitness for Entry Level Ratings"; and

(4) Adjournment of meeting.

Dated: June 25, 2013.

J. G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2013–16253 Filed 7–5–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0043]

Agency Information Collection Activities: Application for Temporary Protected Status, Form I–821; Revision of a Currently Approved Collection

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment on the proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 6, 2013.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0043 in the subject box, the agency name and Docket ID USCIS–2007–0013. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2007–0013;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;* or

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and

Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments: Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public view if it determines the information may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and/or

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Temporary Protected Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–821; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–821 is necessary for USCIS to gather the information necessary to adjudicate TPS applications and determine if an applicant is eligible for TPS.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 91,882 respondents responding via the paper-based Form I–821 at an estimated 1 hour and 55 minutes (1.92 hours) per response. 81,481 respondents responding via the USCIS Electronic Immigration System (USCIS ELIS) at an estimated 1 hour and 45 minutes (1.75 hours) per response. 173,363 respondents for biometrics processing at an estimated 1 hour and 10 minutes (1.17 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 521,840 total annual burden hours.

DHS, USCIS has been engaged in an effort to accurately estimate the burden in terms of time and costs incurred by applicants for obtaining assistance from paid professionals to assist them in the completion of information collections for document preparation, translating evidence to English, and translating English form instructions into the applicant's native language. We have published several notices in the **Federal Register** requesting comments from interested and knowledgeable immigration benefit program stakeholders and the general public. In this notice, USCIS is requesting meaningful input on the following aspects of this information collection:

- The time burden incurred by preparers (persons who assist the respondent with the preparation of the form) who are not paid.
- For preparers who are paid, the time and expense to the respondent to find and secure such preparers for assistance.
- The amount that paid preparers charge for their services.
- The time required to obtain supporting documents for Form I–821.
- The monetary costs incurred to obtain supporting documents from sources such as a landlord, church, utility, public agency (housing, social services, law enforcement), school, medical care provider, advocacy group, law firm, or military service.
- The average time required and money expended to secure secondary evidence such as an affidavit.
- The percentage of total applicants who require English translations of their supporting documents.
- The percentage of supporting documents for each individual applicant that require translation into English.
- The time required to find, hire, or otherwise obtain translations of supporting documents for immigration benefit requests.
- The average out of pocket monetary cost if any to obtain translations of supporting documents when required.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone number 202–272–8377.

Dated: July 2, 2013.

Samantha Deshommes,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–16279 Filed 7–5–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–31]

60-Day Notice of Proposed Information Collection: Certificate of Housing Counseling: Homeownership and Certificate of Housing Counseling: Home Retention

AGENCY: Office of Housing Counseling, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 6, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Betsy Cromwell, Office of Housing Counseling, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Betsy Cromwell, at *Betsy.M.Cromwell@hud.gov* or telephone 202–708–0317, x 2628. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Cromwell.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Certificate of Housing Counseling: Homeownership and Certificate of Housing Counseling: Home Retention.

OMB Approval Number: 2502–New.

Type of Request (i.e. new, revision or extension of currently approved collection): New collection.

Form Number: 9911, 9912.

Description of the need for the information and proposed use: Counseling certificates will provide proof to lenders and other interested parties that clients have received counseling from a HUD-approved counseling agency on the subject matter, either homeownership or home retention counseling. The certificates may be required to access certain loan programs or benefits.

Respondents (i.e. affected public): 8,000.

Estimated Number of Respondents: Individual and Households.

Estimated Number of Responses: 832,000.

Frequency of Response: Quarterly.

Average Hours per Response: 15 mins.

Total Estimated Burdens: 208,000.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 27, 2013.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–16305 Filed 7–5–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5690–N–07]

60-Day Notice of Proposed Information Collection: Training Evaluation Form

AGENCY: Office of the Assistance Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 6, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109 This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Training Evaluation Form.

OMB Approval Number: 2577–0271.

Type of Request: Extension of currently approved collection.

Form Number: HUD 50945.

Description of the need for the information and proposed use: Executive Order 13571, "Streamlining Service Delivery and Improving Customer Service" states "The public deserves competent, efficient, and responsive service from the Federal Government. Executive departments and agencies (agencies) must continuously evaluate their performance in meeting this standard and work to improve it. Executive Order 12862 (Setting Customer Service Standards), issued on September 11, 1993, requires agencies that provide significant services directly to the public to identify and survey their customers, establish service standards and track performance against those standards, and benchmark customer service performance against the best in business.

To that end, the Office of Public and Indian Housing (PIH) will use a standardized training assessment instrument to evaluate learners' reactions to training or technical assistance programs. With the information collected PIH will measure, evaluate, and compare the performance of its various training programs over time. The design of this form follows

industry-accepted best practices, allowing additional comparisons to other training programs in business and government.

Examples of how the Training Evaluation Form is currently being used and will be used are: On-site Core Curriculum training in Financial Management and Governance training at in 22 locations in FY 2013. This training will be web-based in the future. To inspect HUD insured and assisted properties, prospective contract inspectors are required to successfully complete HUD Uniform Physical Condition Standards (UPCS) inspection training. The training consists of pre-requisite computer-based component followed by an instructor led component. To become familiar with the UPCS inspection process and requirements, thereby facilitating and enhancing maintenance of properties and preparation for upcoming contract inspections, public housing agency (PHA) employees and multifamily property owners and agents (POAs) are able to take a computer-based UPCS training.

PIH proposes to use the training form in the future for all other training offered to PIH program participants and stakeholders on major regulatory changes, such as was done for asset management in 2010 and 2011. These sessions may be held as technical assistance seminars, conferences, or briefings.

And, PIH anticipates launching a Web site dedicated to providing links to existing HUD web-based learning materials.

Respondents (i.e., affected public): The training evaluation form will be completed by members of the public and individuals at state and local government entities who participate in a HUD training course.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Training Eval. Form	64,180	1	64,180	.033	2,120	$24.10	$51,092
Total	64,180	1	64,180	.033	2,120	24.10	51,092

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 28, 2013.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2013–16304 Filed 7–5–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD4523WC DWDFSE000.3V0000 DS68664000 DP.BCQSO.13DOIC3Y]

Proposed Renewal of Information Collection; Private Rental Survey

AGENCY: Office of Acquisition and Property Management, Office of the Secretary, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Acquisition and Property Management, Office of the Secretary, Department of the Interior announces the proposed extension of a public information collection and seeks public comments on the provisions thereof.

DATES: Consideration will be given to all comments received by September 6, 2013.

ADDRESSES: Send your written comments to: Doug Pokorney, Quarters Rental Program Manager, 7301 W. Mansfield Ave., Denver, CO 80235, or fax to: 303–969–6634, or by email to *Doug_B_Pokorney@nbc.gov*. Individuals providing comments should reference OMB control number 1084–0033, "Private Rental Survey".

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, any explanatory information and related forms, contact Doug Pokorney, Quarters Rental Program Manager, 7301 W. Mansfield Ave., Denver, CO 80235, or phone: 303–939–5050, or fax: 303–969–6634, or by email to *Doug_B_Pokorney@nbc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice is for renewal of information collection.

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)).

Public Law 88–459 authorizes Federal agencies to provide housing for Government employees under specified circumstances. In compliance with OMB Circular A–45 (Revised), Rental and Construction of Government Quarters, a review of private rental market housing rates is required at least once every 5 years to ensure that the rental, utility charges, and charges for related services to occupants of Government Furnished Housing (GFH) are comparable to corresponding charges in the private sector. To avoid unnecessary duplication and inconsistent rental rates, the Department of the Interior, Office of the Secretary, Interior Business Center, conducts housing surveys in support of employee housing management programs for the Departments of the Interior (DOI), Agriculture, Commerce, Homeland Security, Justice, Transportation, Health and Human Services, and Veterans Affairs. In this survey, two collection forms are used: OS–2000, covering

"Houses—Apartments—Mobile Homes" and OS–2001, covering "Trailer Spaces."

This collection of information provides data that helps DOI and the other Federal agencies to manage GFH in accordance with the requirements of OMB Circular A–45 (Revised). If this information were not collected from the public, DOI and the other Federal agencies required to provide GFH would be required to use professional appraisals of open market rental costs for GFH, again, in accordance with OMB Circular A–45, but at an increased cost to the taxpayer.

II. Data

(1) *Title:* Private Rental Survey.

OMB Control Number: 1084–0033.

Current Expiration Date: September 30, 2013.

Type of Review: Information Collection Renewal.

Affected Entities: Individuals or households, businesses and other for profit institutions.

Estimated annual number of respondents: OS–2000: 3,841; OS–2001: 200; Total: 4,041.

Frequency of responses: Once per respondent every fourth year. **Note:** Three or four of 15 total survey regions are surveyed every year. Therefore a respondent may be potentially be surveyed every fourth year, if an individual respondent lives in the same unit and the exact same unit happens to be surveyed again four years later. In addition, if an individual business is a significant rental property owner or rental property manager in the community they may provide multiple responses in the same survey.

(2) *Annual reporting and recordkeeping burden:* Estimated burden per response: OS–2000: 8 minutes; OS–2001: 6 minutes.

Average number of estimated annual responses: OS–2000: 3,804 (average); OS–2001: 200 (average).

Total estimated average annual reporting: OS–2000: 507 hours; OS–2001: 20 hours, Total: 527 hours.

(3) *Description of the need and use of the information:* This information collection provides the data that enables DOI to determine open market rental costs for GFH. These rates, in turn, enable DOI and other Federal agencies to set GFH rental rates in accordance with the requirements of OMB Circular A–45 (Revised).

III. Request for Comments

The Departments invite comments on:

(a) Whether the 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 collection of information and 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 respondents, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

"Burden" means the total time, effort, and financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and use technology and systems for the purposes 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, and to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments, with names and addresses, will be available for public inspection. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law. If you wish to view any comments received, you may do so by scheduling an appointment with the point of contact given in the **ADDRESSES** section. A valid picture identification is required for entry into the Department of the Interior.

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.

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: July 1, 2013.

Debra E. Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. 2013–16247 Filed 7–5–13; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N150; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before August 7, 2013. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by August 7, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES.** Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your

comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, "Delivering an Efficient, Effective, and Accountable Government," and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: University of California, Santa Cruz, CA; PRT–96462A

The applicant requests a permit to import hair and skin punch samples from four captive-bred Chimpanzee (*Pan troglodytes*) and Bonobo (*Pan paniscus*) hybrids for the purpose of scientific research and enhancement of the survival of the species.

Applicant: Seneca Park Zoo, Rochester, NY; PRT–687596

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Felidae (does not include jaguar, margay and ocelot)
Hominidae
Hylobatidae
Lemuridae

Species

Bali starling (*Leucopsar rothschildi*)

Applicant: Walter Sturgeon, Spring Hope, NC; PRT–683352

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the family Gruidae and Bali starling (*Leucopsar rothschildi*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: World Class Reptiles, Bastrop, TX; PRT–09757B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the dwarf crocodile (*Osteolaemus tetraspis*), African slender-snouted crocodile (*Crocodylus cataphractus*), Yacare caiman (*Caiman yacare*), caiman (*Caiman crocodilus*), broad-snouted caiman (*Caiman latirostris*), Galapagos tortoise (*Chelonoidis nigra*), radiated tortoise (*Astrochelys radiata*), Cuban ground iguana (*Cyclura nubila nubila*), Grand Cayman blue iguana (*Cyclura lewisi*), and Cayman Brac ground iguana (*Cyclura nubila caymanensis)* to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: John Anderson, Houston, TX; PRT–09440B

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: John Anderson, Houston, TX; PRT–09439B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Reide Sneddon, Laguna Hills, CA; PRT–089277

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the Galapagos tortoise (*Chelonoidis nigra*) and radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: University of Pennsylvania, Hahn Laboratory; PRT–08072B

The applicant requests a permit to import biological samples of wild-caught and captive-born Chimpanzees (*Pan troglodytes*) for the purpose of scientific research and enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: John Alexander, Bakersfield, CA; PRT–09161B

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

B. Endangered Marine Mammals and Marine Mammals

Applicant: Thomas Postel, Clermont, FL; PRT–19806A

The applicant requests renewal of the permit to photograph West Indian manatees (*Trichechus manatus*) above and underwater for commercial and educational purposes in the waters of

the State of Florida. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–16244 Filed 7–5–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Call for Nominations to the National Geospatial Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Call for Nominations.

SUMMARY: The Department of the Interior is seeking nominations to serve on the National Geospatial Advisory Committee (NGAC). The NGAC is a Federal Advisory Committee established under the authority of the Federal Advisory Committee Act (FACA). The Committee provides advice and recommendations to the Secretary of the Interior through the Federal Geographic Data Committee related to management of Federal geospatial programs, development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget Circular A–16 and Executive Order 12906. The Committee reviews and comments upon geospatial policy and management issues and provides a forum for views of non-Federal stakeholders in the geospatial community.

DATES: Nominations to participate on this Committee must be received by August 12, 2013.

ADDRESSES: Send nominations electronically to *ngacnominations@fgdc.gov*, or by mail to John Mahoney, U.S. Geological Survey, U.S. Department of the Interior, 909 First Avenue, Suite 800, Seattle, WA 98104. Nominations may come from employers, associations, professional organizations, or other geospatial organizations. Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee and permit the Department of the Interior to contact a potential member. Nominees are strongly encouraged to include supporting letters from employers, associations, professional organizations, and/or other organizations that indicate the support by a meaningful constituency for the nominee.

FOR FURTHER INFORMATION CONTACT: John Mahoney, USGS (206–220–4621). Additional information about the NGAC and the nomination process is posted on the NGAC Web page at *www.fgdc.gov/ngac*.

SUPPLEMENTARY INFORMATION: The Committee conducts its operations in accordance with the provisions of FACA. It reports to the Secretary of the Interior through the Federal Geographic Data Committee (FGDC) and functions solely as an advisory body. The Committee provides recommendations and advice to the Department and the FGDC on policy and management issues related to the effective operation of Federal geospatial programs.

The NGAC includes up to 30 members, selected to generally achieve a balanced representation of the viewpoints of the various partners involved in national geospatial activities. NGAC members are appointed for staggered terms, and approximately one-half of the positions on the committee will be appointed during this round of appointments. Nominations will be reviewed by the FGDC and additional information may be requested from nominees. Final selection and appointment of committee members will be made by the Secretary of the Interior. Individuals who are currently federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils.

The Committee meets approximately 3–4 times per year. Committee members will serve without compensation, but travel and per diem costs will be provided by USGS. The USGS will also provide necessary support services to the Committee. Committee meetings are open to the public. Notice of committee meetings are published in the **Federal Register** at least 15 days before the date of the meeting. The public will have an opportunity to provide input at these meetings.

Dated: June 27, 2013.

Ivan DeLoatch,

Executive Director, Federal Geographic Data Committee.

[FR Doc. 2013–16261 Filed 7–5–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA9300000;L14300000;EU0000;CACA 053961]

Notice of Intent To Amend the California Desert Conservation Area Plan for the Needles Field Office and Prepare an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Needles Field Office, Needles, California, intends to prepare an amendment to the 1980 California Desert Conservation Area (CDCA) Plan with an associated Environmental Assessment (EA) to analyze the sale of the reversionary interest held by the United States (U.S.) in 50 acres of land previously conveyed out of Federal ownership and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the CDCA Plan amendment with an associated EA. Comments on issues may be submitted in writing until August 7, 2013. The BLM does not plan to hold any scoping meetings for this plan amendment. In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the CDCA Plan amendment and associated EA by any of the following methods:

- *Email: gmeckfessel@blm.gov*
- *Fax:* 760–326–7099
- *Mail:* Raymond Lee, BLM Needles Field Manager, 1303 S. Highway 95, Needles, CA 92363

Documents pertinent to this proposal may be examined at the Needles Field Office, 1303 S. U.S. Highway 95, Needles, CA 92363.

FOR FURTHER INFORMATION CONTACT: George R. Meckfessel, Planning and Environmental Coordinator, BLM Needles Field Office, telephone 760–326–7008; address 1303 S. U.S. Highway 95, Needles, CA 92363; email *gmeckfessel@blm.gov*. You may request

to have your name added to the BLM's mailing list. Further information is also available online at the Needles BLM Field Office Web site: *http://www.blm.gov/ca/st/en/fo/needles.html.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Needles Field Office, Needles, California, intends to prepare an amendment to the 1980 CDCA Plan with an associated EA; announces the beginning of the scoping process; and seeks public input on issues and planning criteria. The planning area is located in San Bernardino County, California, and encompasses the reversionary interest held by the U.S. in 50 acres of land previously conveyed out of Federal ownership. The BLM anticipates receiving requests from the current owners to purchase the reversionary interest held by the U.S. in portions of the following described land:

San Bernardino Meridian

T. 9 N., R. 23 E.,
Sec. 31, NWNENE and NWNE.

Containing 50 acres in San Bernardino County, California.

The land described above was conveyed in 1966 to the City of Needles under the authority of the Recreation and Public Purposes Act of June 14, 1926 (R&PP) for park and recreational purposes. The land is surrounded by private land and is not contiguous to any other public land. When public land is conveyed under the authority of the R&PP, the U.S. retains a reversionary interest in the land, which could result in title to the land reverting to the U.S. if the land is not used for the purposes for which it was conveyed, or if the land is sold or transferred without the BLM's approval. The BLM is responsible for monitoring the reversionary interest in perpetuity to ensure the land is used for the purposes for which it was conveyed. Since the land described above was conveyed in 1966, the BLM has approved the transfer of title to a portion of the land to the County of San Bernardino and has approved several changes in use of the land. The reversionary interest in the land described above was not specifically identified for sale in the 1980 CDCA Plan, as amended, and a plan amendment is required to process a direct sale. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process.

The BLM anticipates that the EA will consider both a plan amendment and possible subsequent sales of the Federal reversionary interest and has identified local land uses and input from local governments as the primary preliminary issue of concern. The BLM anticipates that the EA will include, at a minimum, input from the disciplines of land use planning, biology, and archaeology. This plan amendment will be limited to an analysis of whether the reversionary interest in the land described above meets the criteria for sale under Section 203 of FLPMA, which are the planning criteria for this amendment.

You may submit comments on issues and planning criteria in writing to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, your comments should be submitted by the close of the 30-day scoping period.

The BLM will use its fulfillment of the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

The BLM will evaluate identified issues to be addressed in the plan amendment, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan amendment. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

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 1501.7 and 43 CFR 1610.2.

Cynthia Staszak,

Associate Deputy State Director, Resources California.

[FR Doc. 2013–16276 Filed 7–5–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14200000.BJ0000 241A; 13–08807; MO# 4500052367; TAS: 14X1109]

Filing of Plats of Survey; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6490. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message

or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

1. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 10, 2013:

The supplemental plat, in 1 sheet, showing the subdivision of former lot 16, section 19, Township 22 South, Range 60 East, Mount Diablo Meridian, Nevada under Group 923 was accepted April 5, 2013. This supplemental plat was prepared to meet certain administrative needs of the BLM.

2. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on April 15, 2013:

The plat, in 1 sheet, representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 33, Township 23 South, Range 64 East, of the Mount Diablo Meridian, Nevada, under Group No. 915, was accepted April 10, 2013. This survey was executed to meet certain administrative needs of the BLM.

3. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on the first business day after thirty (30) days from the publication of this notice:

This plat, in 3 sheets, representing the dependent resurvey of a portion of a portion of the south boundary of Township 40 North, Range 31 East; and the dependent resurvey of the east boundary, a portion of the north boundary and a portion of the subdivisional lines, and the subdivision of certain sections, Township 39 North, Range 31 East, of the Mount Diablo Meridian, Nevada, under Group No. 807, was accepted June 25, 2013. This survey was executed to meet certain administrative needs of the BLM.

4. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on the first business day after thirty (30) days from the publication of this notice:

This plat, in 1 sheet, representing the dependent resurvey of portions of the south and north boundaries and a portion of the subdivisional lines, the survey of a portion of the subdivisional lines, and the subdivision of certain sections, Township 38 North, Range 31 East, of the Mount Diablo Meridian, Nevada, under Group No. 802, was accepted June 25, 2013. This survey was executed to meet certain administrative needs of the BLM.

Subject to valid existing rights, the provisions of existing withdrawals and classifications, the requirement of applicable laws, and other segregations of record, these lands are open to application, petition and disposal, including application under the mineral leasing laws. All such valid applications received on or before the official filing of the Plat of Survey described in Plat of Survey #4, shall be considered as simultaneously filed at that time. Applications received thereafter shall be considered in order of filing.

The surveys listed above are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: June 26, 2013.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2013–16309 Filed 7–5–13; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000–13XL1116AF: HAG13–0232]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 32 S., R. 1 W., accepted June 14, 2013
T. 15 S., R. 12 E., accepted June 14, 2013
T. 38 S., R. 2 W., accepted June 14, 2013

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6132, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

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.

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2013–16308 Filed 7–5–13; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Renewals of Information Collections Under the Paperwork Reduction Act

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Indian Gaming Commission (NIGC or Commission) is seeking comments on the renewal of information collections for the following activities: (i) Compliance and enforcement actions under the Indian Gaming Regulatory Act as authorized by Office of Management and Budget (OMB) Control Number 3141–0001; (ii) approval of tribal ordinances, and background investigation and issuance of licenses as authorized by OMB Control Number 3141–0003; (iii) National Environmental Policy Act

submissions as authorized by OMB Control Number 3141–0006; and (iv) issuance to tribes of certificates of self-regulation for Class II gaming as authorized by OMB Control Number 3141–0008. These information collections all expire on October 31, 2013.

DATES: Submit comments on or before September 6, 2013.

ADDRESSES: Comments can be mailed, faxed, or emailed to the attention of: Armando J. Acosta, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Comments may be faxed to (202) 632–7066 and may be sent electronically to *info@nigc.gov,* subject: PRA renewals.

FOR FURTHER INFORMATION CONTACT: Armando J. Acosta at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Request for Comments

You are invited to comment on these collections concerning: (i) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimates of the burdens (including the hours and cost) of the proposed collections of information, including the validity of the methodologies and assumptions used; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burdens of the information collections on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or forms of information technology. Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is the Commission's policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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 may ask in your comment that the Commission withhold your personal identifying information from public review, the Commission cannot guarantee that it will be able to do so.

II. Data

Title: Indian Gaming Compliance and Enforcement.

OMB Control Number: 3141–0001.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701 et seq., governs the regulation of gaming on Indian lands. Although IGRA places primary responsibility with the tribes for regulating their Class II gaming activities, § 2706(b) directs the Commission to monitor Class II gaming conducted on Indian lands on a continuing basis. Amongst other actions necessary to carry out the Commission's statutory duties, the Act authorizes the Commission to access and inspect all papers, books, and records relating to gross revenues of a Class II gaming operation. The Act also requires tribes to provide the Commission with annual independent audits of their gaming operations, including audits of all contracts in excess of $25,000. 25 U.S.C. 2710(b)(2)(C), (D); 2710(d)(1)(A)(ii). In accordance with these statutory mandates, Commission regulations require Indian gaming operations to keep and maintain permanent financial records, and to submit to the Commission independent audits of their gaming operations on an annual basis. This information collection is mandatory and allows the Commission to fulfill its statutory responsibilities under IGRA to regulate Class II gaming on Indian lands.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 1268.

Estimated Annual Responses: 1268.

Estimated Time per Response: Depending on the type of information collection, the range of time can vary from 20.5 burden hours to 1506.75 burden hours for one item.

Frequency of Responses: 1 per year.

Estimated Total Annual Burden Hours on Respondents: 1,065,955.5.

Estimated Total Non-hour Cost Burden: $50,665,016.

Title: Approval of Class II and Class III Ordinances, Background Investigations, and Gaming Licenses.

OMB Control Number: 3141–0003.

Brief Description of Collection: The Act sets standards for the regulation of gaming on Indian lands, including requirements for the approval or disapproval of tribal gaming ordinances. Section 2705(a)(3) requires the NIGC Chair to review all Class II and Class III tribal gaming ordinances. In accordance with this statutory provision, Commission regulations require tribes to submit: (i) A copy of the gaming ordinance, or amendment thereof, to be approved, including a copy of the authorizing resolution by which it was enacted by the tribal government, and a request for approval of the ordinance or resolution; (ii) designation of an agent for service of process; (iii) a description of procedures the tribe will employ in conducting background investigations on primary management officials (PMOs) and key employees; (iv) a description of procedures the tribe will use to issue licenses to PMOs and key employees; (v) copies of all gaming regulations; (vi) a copy of any applicable tribal-state compact; (vii) a description of dispute resolution procedures for disputes arising between the gaming public and the tribe or management contractor; and (viii) identification of the law enforcement agency that will take fingerprints and a description of the procedures for conducting criminal history checks. The Commission also requires a tribal ordinance to provide that the tribe will perform background investigations and issue licenses for PMOs and key employees according to requirements that are as stringent as those contained in Commission regulations. The NIGC Chair will use the information collected to approve or disapprove the ordinance or amendment thereof.

Commission regulations also require tribes to perform background investigations and issue licenses for PMOs and key employees using certain information provided by applicants, such as names, addresses, previous employment records, previous relationships with either Indian tribes or the gaming industry, licensing related to those relationships, any convictions, and any other information that a tribe feels is relevant to the employment of the individuals being investigated. Tribes are then required to keep complete application files. Tribes are also required to create and keep investigative reports, and to submit to the Commission notices of results (licensing eligibility determinations) on PMOs and key employees. Tribes must notify the Commission if they issue or do not issue licenses to PMOs and key employees, and if they revoke said licenses. The Commission uses this information to review the eligibility and suitability determinations that tribes make and advises them if it disagrees with any particular determination. These information collections are mandatory and allow the Commission to carry out its statutory duties.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 1,580.

Estimated Annual Responses: 193,751.

Estimated Time per Response: Depending on the type of information collection, the range of time can vary from 1.0 burden hour to 1,419 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours on Respondents: 1,392,450.

Estimated Total Non-hour Cost Burden: $3,334,176.

Title: NEPA Compliance.

OMB Control Number: 3141–0006.

Brief Description of Collection: The National Environmental Policy Act (NEPA) requires federal agencies to analyze proposed major federal actions that significantly affect the quality of the human environment. The Commission has identified one type of action that it undertakes that requires review under NEPA—approving third-party management contracts for the operation of gaming activity under IGRA. Depending on the nature of the subject contract and other circumstances, approval of such management contracts may be categorically excluded from NEPA, may require the preparation of an Environmental Assessment (EA), or may require the preparation of an Environmental Impact Statement (EIS). In any case, the proponents of a management contract will be expected to submit information to the Commission and assist in the development of the required NEPA documentation.

Respondents: Tribal governing bodies, management companies.

Estimated Number of Respondents: 3.

Estimated Annual Responses: 3.

Estimated Time per Response: Depending on whether the response is an EA or an EIS, the range of time can vary from 2.5 burden hours to 12.0 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours on Respondents: 26.5.

Estimated Total Non-hour Cost Burden: $14,846,686.

Title: Issuance of Certificates of Self-Regulation to Tribes for Class II Gaming.

OMB Control Number: 3141–0008.

Brief Description of Collection: The Act allows any Indian tribe that has conducted Class II gaming for at least three years to petition the Commission for a certificate of self-regulation for its Class II gaming operation(s). The Commission will issue the certificate if it determines that the tribe has conducted its gaming activities in a manner that has: Resulted in an effective and honest accounting of all revenues; a reputation for safe, fair, and honest operation of the gaming activities; and an enterprise free of evidence of criminal or dishonest activity. The tribe must also have adopted and implemented proper accounting, licensing, and enforcement systems, and conducted the gaming operation on a fiscally or economically sound basis. Commission regulations require a tribe interested in receiving a certificate to file with the Commission a petition generally describing the tribe's gaming operations, its regulatory process, its uses of net gaming revenue, and its accounting and recordkeeping systems. The tribe must also provide copies of various documents in support of the petition. Tribes who have been issued a certificate of self-regulation are required to submit to the Commission certain information on an annual basis, including information that establishes that the tribe continuously meets the regulatory eligibility and approval requirements and supporting documentation that explains how tribal gaming revenues were used in accordance with the requirements in 25 U.S.C. 2710(b)(2)(B). Submission of the petition and supporting documentation is voluntary. The Commission will use the information submitted by the tribe in determining whether to issue the certificate of self-regulation. Once a certificate of self-regulation has been issued, the submission of certain other information is mandatory.

Respondents: Tribal governments.

Estimated Number of Respondents: 8.

Estimated Annual Responses: 64.

Estimated Time per Response: Depending on the information collection, the range of time can vary from 0.75 burden hour to 1,940 burden hours for one item.

Frequency of Responses: Varies.

Estimated Total Annual Burden Hours on Respondents: 4,130.

Estimated Total Non-hour Cost Burden: $172,450.

Dated: July 1, 2013.

Christinia J. Thomas,

Deputy Chief of Staff.

[FR Doc. 2013–16179 Filed 7–5–13; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

[NPS–CONC–ABSV–13034; PPMVSCS1Y.Y00000, PPWOBSADC0]

Notice of Extension of Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: The National Park Service hereby gives public notice that it proposes to extend the following concession contracts until the dates shown:

CONCID	Extend until—
CC–ORCA001–03	December 31, 2014.
CC–DENA005–04	December 31, 2014.
CC–DENA006–04	December 31, 2014.
CC–DENA008–04	December 31, 2014.
CC–DENA009–04	December 31, 2014.
CC–DENA010–04	December 31, 2014.
CC–DENA011–04	December 31, 2014.
CC–KATM001–08	December 31, 2015.

DATES: Effective May 1, 2013.

FOR FURTHER INFORMATION CONTACT: Deborah Harvey, Acting Chief, Commercial Services Program, National Park Service, 1201 Eye Street NW., 11th Floor, Washington, DC 20005; telephone (202) 513–7156.

SUPPLEMENTARY INFORMATION: Pursuant to 36 CFR 51.23, the National Park Service has determined the proposed extensions are necessary to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

Dated: May 17, 2013.

Lena McDowall,

Associate Director, Business Services.

[FR Doc. 2013–16264 Filed 7–5–13; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–NACA–12572; PPNCNCROL0, PPMPSPD1Y.M000]

Notice of Meeting, National Capital Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the National Capital Memorial Advisory Commission.

DATES: The public meeting of the National Capital Memorial Advisory Commission will be held on Tuesday, July 23, 2013, at 1:00 p.m. (EST).

ADDRESSES: The Commission members will meet in the National Building Museum, Room 312, 401 F Street NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn DeMarr by telephone at (202)

619–7025 or by email at *glenn_demarr@nps.gov*, or Mr. Scott Simmons by telephone at (202) 619–7097 or by email at *scott_simmons@nps.gov*. Information is also available at the Commission's Web site, *http://parkplanning.nps.gov/ncmac*.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 et seq.), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service
Administrator, General Services Administration
Chairman, National Capital Planning Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Architect of the Capitol
Chairman, American Battle Monuments Commission
Secretary of Defense

The Commission will consider informational items and memorial legislation introduced in the 113th Congress:

(1) Memorial to President John Adams and his Legacy—further review of Freedom Plaza in Washington, DC, as the preferred site for the memorial (Action Item).

(2) Memorial to Slaves and Free Black Persons who Served in the American Revolution—preliminary discussion of site considerations (Informational Presentation).

(3) Legislation introduced in the 113th Congress (Action Items).

(a) S. 704 and H.R. 620, proposals to authorize a Rachel Carson Trail in the District of Columbia.

(b) H.R. 222, a proposal to authorize the World War I Memorial Foundation to establish a National World War I Memorial on the National Mall in the District of Columbia.

(c) H.R. 318, a proposal to authorize a Wall of Remembrance as part of the Korean War Veterans Memorial.

(d) H. R. 2395, a proposal to amend the Commemorative Works Act to provide for the display of donor contribution acknowledgments at memorials authorized under the Commemorative Works Act.

(4) Other Business.

The meeting will begin at 1:00 p.m. and is open to the public. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Mr. DeMarr or Mr. Simmons. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 27, 2013.

Stephen E. Whitesell,

Regional Director, National Capital Region.

[FR Doc. 2013–16267 Filed 7–5–13; 8:45 am]

BILLING CODE 4310–DL–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On July 1, 2013, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Kansas in the lawsuit entitled *United States* v. *Kansas Department of Transportation*, Civil Action No. 13–cv–04069.

The consent decree resolves the United States' complaint for civil penalties and injunctive relief against the Kansas Department of Transportation ("KDOT") relating to four separate road-building projects. The complaint alleged violations of Section 301(a) and 402 of the Clean Water Act ("CWA"), which prohibits the discharge of pollutants to waters of the United States unless authorized by an NPDES permit. Under the terms of the settlement, KDOT will pay a civil penalty of $477,500 to the United States. KDOT will also implement a variety of injunctive relief measures, which are above and beyond what is required by their NPDES construction storm water permit regarding personnel, training, maintenance, and contract specifications.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Kansas Department of Transportation*, D.J. Ref. No. 90–5–1–1–10420. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email ...	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $15.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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NUCLEAR REGULATORY COMMISSION

[EA–13–041; NRC–2013–0145]

In the Matter of Licensee Identified In Attachment 1 and All Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)

I

The Licensee identified in Attachment 1 [1] to this Order, holds a license issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC) or an Agreement State, authorizing them to engage in an activity subject to regulation by the Commission or Agreement States. In accordance with Section 149 of the AEA, fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check are required of any person who is to be permitted to have access to Safeguards Information (SGI).[2] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway. Although the AEA permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done (*see* 10 CFR 73.59, 77 FR 34206 (June 11, 2012), it is unlikely that licensee employees or others are excepted from the fingerprinting requirement by the "fingerprinting relief" rule. Individuals relieved from fingerprinting and criminal history records checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees, and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, individuals who have a favorably-decided U.S. Government criminal history records check within the last five (5) years, or individuals who have active Federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the AEA fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI. This Order also imposes requirements for access to SGI by any person, from any person,[3] whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, Section 149 of the AEA requires fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need-to-know the information and satisfies the trustworthy and reliability requirements described in Attachment 3 to Order EA–13–040 (NRC–2013–0144).

In order to provide assurance that the Licensees identified in Attachment 1 to this Order are implementing appropriate measures to comply with the fingerprinting and criminal history records check requirements for access to SGI, all Licensees identified in Attachment 1 to this Order shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 30 and 73, IT IS HEREBY ORDERED, effective immediately, that all licensees identified in Attachment 1 to this order and all other persons who seek or obtain access to safeguards information, as described above, shall comply with the requirements set forth in this order.

A. 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted or who has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 (77 FR 34206 (June 11, 2012)), or who has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or who has an active Federal security clearance, provided in the latter two cases that the appropriate documentation is made available to the Licensee's NRC-approved reviewing official described in paragraph III.C.2 of this Order.

2. No person may have access to any SGI if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. All Licensees identified in Attachment 1 to this Order shall comply with the following requirements:

1. The Licensee shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 2 to this Order.

2. The Licensee shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who (a) the Licensee nominates as the "reviewing official" for determining access to SGI by other individuals, and (b) has an established need-to-know the information and has been determined to be trustworthy and reliable in accordance with the requirements described in Attachment 3 to Order EA–13–040. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as the Licensee's

[1] Attachment 1 contains sensitive information and will not be released to the public.

[2] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under section 147 of the AEA.

[3] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the U.S. Department of Energy (DOE), except that the DOE shall be considered a person with respect to those facilities of the DOE specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

reviewing official.[4] The Licensee may, at the same time or later, submit the fingerprints of other individuals to whom the Licensee seeks to grant access to SGI or designate an additional reviewing official(s). Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 of this Order.

3. The Licensee shall, in writing, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in this Order, including Attachment 2 to this Order, or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

Licensee responses to C.1., C.2., and C.3. above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee responses shall be marked as "Security-Related Information—Withhold Under 10 CFR 2.390."

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August, 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for a hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

[4] The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 5 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 27th day of June, 2013.

For the Nuclear Regulatory Commission.

Brian J. McDermott,

Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: List of Applicable Materials Licensees Redacted

Attachment 2: Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees shall comply with the requirements of this attachment.

A. 1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information" section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the agency/employer which granted the Federal security clearance or reviewed the criminal history records check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements included in Attachment 3 to NRC Order EA–13–040, in making a determination whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The Licensee shall document the basis for its determination whether to grant access to SGI.

B. The Licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the Licensee's reviewing official.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an

appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop TWB–05B32M, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRC000Z), or where practicable, other fingerprint records for each individual seeking access to Safeguards Information, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Program. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by calling 630–829–9565, or by email to *forms.resource@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, or money order, made payable to "U.S. NRC." [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at 301–492–3531]. Combined payment for multiple applications is acceptable. The application fee (currently $26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with the NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the Licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. 2013–16288 Filed 7–5–13; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–13–040; NRC–2013–0144]

Order Imposing Requirements for the Protection of Certain Safeguards Information (Effective Immediately); In the Matter of Licensee Identified in Attachment 1 and All Other Persons Who Obtain Safeguards Information Described Herein

I

The Licensee, identified in Attachment 1 [1] to this Order, holds a

[1] Attachment 1 contains sensitive information and will not be released to the public.

license issued in accordance with the Atomic Energy Act of 1954, as amended, (AEA) by the U.S. Nuclear Regulatory Commission (NRC) or an Agreement State, authorizing it to possess, use, and transfer items containing radioactive material quantities of concern. The NRC intends to issue security Orders to this licensee in the near future. The Order will require compliance with specific Additional Security Measures to enhance the security for certain radioactive material quantities of concern. The Commission has determined that these documents will contain Safeguards Information, will not be released to the public, and must be protected from unauthorized disclosure. Therefore, the Commission is imposing the requirements, as set forth in Attachments 2 and 3 to this Order and in Order EA–13–041 (NRC–2013–0145), so that the Licensee can receive these documents. This Order also imposes requirements for the protection of Safeguards Information in the hands of any person,[2] whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the AEA grants the Commission explicit authority to ". . . issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information . . . ." This authority extends to information concerning the security measures for the physical protection of special nuclear material, source material, and byproduct material. Licensees and all persons who produce, receive, or acquire Safeguards Information must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information contained in Attachments 2 and 3 to this Order. The Commission hereby provides notice that it intends to treat violations of the requirements contained in Attachments 2 and 3 to this Order applicable to the handling and unauthorized disclosure of Safeguards Information as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States.

Access to Safeguards Information is limited to those persons who have established the need-to-know the information, are considered to be trustworthy and reliable, and meet the requirements of Order EA–13–041. A need-to-know means a determination by a person having responsibility for protecting Safeguard Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

The Licensee and all other persons who obtain Safeguards Information must ensure that they develop, maintain and implement strict policies and procedures for the proper handling of Safeguards Information to prevent unauthorized disclosure, in accordance with the requirements in Attachments 2 and 3 to this Order. The Licensee must ensure that all contractors whose employees may have access to Safeguards Information either adhere to the licensee's policies and procedures on Safeguards Information or develop, or maintain and implement their own acceptable policies and procedures. The Licensee remains responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in Attachments 2 and 3 to this Order must address, at a minimum, the following: the general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; correspondence containing Safeguards Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; removal of the Safeguards Information category; the need-to-know the information; and background checks to determine access to the information.

In order to provide assurance that the Licensee is implementing prudent measures to achieve a consistent level of protection to prohibit the unauthorized disclosure of Safeguards Information, the Licensee shall implement the requirements identified in Attachments 2 and 3 to this Order. In addition, pursuant to 10 CFR Part 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 147, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, 10 CFR Part 32, 10 CFR Part 35, 10 CFR Part 70, and 10 CFR Part 73, *it is hereby ordered,* effective immediately, that all licensees identified in attachment 1 to this order and all other persons who produce, receive, or acquire the additional security measures identified above (whether draft or final) or any related safeguards information shall comply with the requirements of attachments 2 and 3 to this order.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing.

A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the U.S. Department of Energy (DOE), except that the DOE shall be considered a person with respect to those facilities of the DOE specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August, 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for a hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an

extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 27th day of June, 2013.

For the Nuclear Regulatory Commission.

Brian J. McDermott,

Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: List of Applicable Materials Licensees

Redacted

Attachment 2: Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI–M) General Requirement

Redacted

Attachment 3: Trustworthiness and Reliability Requirements for Individuals Handling Safeguards Information

In order to ensure the safe handling, use, and control of information designated as Safeguards Information, each licensee shall control and limit access to the information to only those individuals who have established the need-to-know the information, and are considered to be trustworthy and reliable. Licensees shall document the basis for concluding that there is reasonable assurance that individuals granted access to Safeguards Information are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the information.

The Licensee shall comply with the requirements of this attachment:

1. The trustworthiness and reliability of an individual shall be determined based on a background investigation:

(a) The background investigation shall address at least the past three years and, at a minimum, include verification of employment, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual).

(b) If an individual's employment has been less than the required three-year period, educational references may be used in lieu of employment history.

The licensee's background investigation requirements may be satisfied for an individual that has an active Federal security clearance.

2. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

In order for an individual to be granted access to Safeguards Information, the individual must be determined to be trustworthy and reliable, as described in requirement 1 above, and meet the requirements of NRC Order EA–13–041.

[FR Doc. 2013–16285 Filed 7–5–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0141]

Issuance of Regulatory Guide 1.124 and Regulatory Guide 1.130

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory Guide; Issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 3 of Regulatory Guide (RG) 1.124, "Service Limits and Loading Combinations for Class 1 Linear-Type Supports," and Revision 3 of RG 1.130, "Service Limits and Loading Combinations for Class 1 Plate-and-Shell-Type Supports." There are no substantive changes to these regulatory guides. The revisions include an update of the Edition and Addenda of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (B&PVC). Regulatory Guides 1.124 and 1.130 delineates levels of service limits and appropriate combinations of loadings associated with normal operation, postulated accidents, and specified seismic events for the design of Class 1 linear-type component and piping supports, and Class 1 plate-and-shell-type component and piping supports, respectively.

ADDRESSES: Please refer to Docket ID NRC–2013–0141 when contacting the NRC about the availability of information regarding these documents. You may access information related to these documents, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0141. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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*. Revision 3 of RG 1.124 and Revision 3 of RG 1.130 are available in ADAMS under Accession Nos. ML13141A666 and ML13141A667, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's Public Document Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Hector Rodriguez-Luccioni, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–251–7685, email: *Hector.Rodriguez-Luccioni@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to existing guides in the NRC's "Regulatory Guide" series. Regulatory guides were developed to describe and make available to the public information methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The NRC is issuing Revision 3 of RG 1.124 (ADAMS Accession No. ML 13141A666) and Revision 3 of RG 1.130 (ADAMS Accession No. ML13141A667) as final regulatory guides without an opportunity for public comment, because the changes between Revision 2 and Revision 3 are non-substantive. The most significant change in Revision 3 of both regulatory guides is the approval for use of the 2007 Edition through the 2008 Addenda of the Boiler and Pressure Vessel Code (ASME B&PV Code), Section III, Division 1 (limited to

the subject matters covered in each regulatory guide). The earlier revisions of both guides (Revision 2) approved for use the ASME B&PV Code, 2001 Edition through the 2003 Addenda. There were no changes from the 2001 Edition through the 2003 Addenda, to the 2007 Edition through the 2008 Addenda affecting the technical content of either of the two regulatory guides. The remaining changes reflected in Revision 3 of each regulatory guide are editorial in nature, to improve clarity and to provide for a new standardized format for the regulatory guides. Therefore, the NRC has determined that an opportunity for public comment is not necessary on Revision 3 of both RG 1.124 and RG 1.130.

II. Submitting Suggestions for Improvement of Regulatory Guides

The NRC typically seeks public comment on a draft version of a regulatory guide by announcing its availability for comment in the **Federal Register**. However, as explained on page 7 of NRC Management Directive 6.6 "Regulatory Guides," (ADAMS Accession Number ML110330475) the NRC may directly issue a final regulatory guide without a draft version or public comment period if the changes to the regulatory guide are non-substantive.

Revision 3 of RG 1.124 and Revision 3 of RG 1.130 are being issued without public comment. However, you may at any time submit suggestions to the NRC for improvement of existing regulatory guides or for the development of new regulatory guides to address new issues. Suggestions can be submitted by the form available online at *http://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html*. Suggestions will be considered in future updates and enhancements of the regulatory guide.

III. Backfitting and Issue Finality

Issuance of this final regulatory guide does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. Revision 3 of RG 1.124 and 1.130 approves for use the 2007 Edition through the 2008 Addenda of the Boiler and Pressure Vessel Code (ASME B&PV Code), Section III, Division 1 (limited to the subject matters covered in each regulatory guide). There were no changes from the 2001 Edition through the 2003 Addenda, to the 2007 Edition through the 2008 Addenda affecting the technical content of either of the two regulatory guides. Therefore, the revisions to these two regulatory guides do not constitute backfitting nor are they otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The revisions to these two regulatory guides also include editorial changes to improve clarity and to provide a new standardized format for regulatory guides, and the approval for use of the 2007 Edition through the 2008 Addenda of the ASME B&PV Code, Section III, Division 1. These changes do not fall within the kinds of agency actions that constitute backfitting or are subject to limitations in the issue finality provisions of part 52. Accordingly, the NRC did not address the Backfit Rule or issue finality provisions of part 52 for these types of changes.

III. Congressional Review Act

These regulatory guides are rules as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found them to be major rules as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 27th day of June, 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–16292 Filed 7–5–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–71; Order No. 1770]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Global Expedited Package Services (GEPS) 3 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 8, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the FOR FURTHER INFORMATION CONTACT section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On June 28, 2013, the Postal Service filed a notice stating that it has entered into an additional Global Expedited Package Services (GEPS) 3 negotiated service agreement (Agreement).[1] The Postal Service seeks inclusion of the Agreement within the GEPS 3 product. *Id.* at 2.

II. Background

The Commission first approved the addition of a GEPS negotiated service agreement to the competitive product list as a result of consideration of Governors' Decision No. 08–7 in Docket No. CP2008–5.[2] The Commission later added GEPS 3 to the competitive product list and authorized the agreement filed in Docket No. CP2010–71 to serve as the baseline agreement for comparison of potentially functionally equivalent agreements.[3]

The effective date of the Agreement will be established by the Postal Service after it has received all regulatory approvals. *Id.* Attachment 1 at 6. It is set to expire on the last day of the month which falls one calendar year from the effective date. *Id.*

III. Contents of Filing

The Notice includes the following attachments:

- Attachment 1—a redacted copy of the Agreement;
- Attachment 2—a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–7, which establishes prices and classifications for Global Expedited Package Services Contracts; and
- Attachment 4—an application for non-public treatment of materials to be filed under seal.

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, June 28, 2013 (Notice).

[2] *See* Order No. 86, Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008.

[3] *See* Order No. 503, Docket Nos. MC2010–28 and CP2010–71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010.

Materials filed under seal include unredacted copies of the Agreement, the certified statement, and supporting financial workpapers. *Id.* Attachment 4 at 3. The Postal Service filed redacted versions of the financial workpapers as public Excel files.

In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the GEPS 3 baseline agreement, notwithstanding differences in two of the introductory paragraphs of the Agreement; revisions to several existing articles; new, deleted, and renumbered articles; and addition of an Annex 2. *Id.* at 3–7. The Postal Service states that these differences affect neither the fundamental service being offered under the Agreement nor the Agreement's fundamental structure. *Id.* at 7.

The Postal Service concludes that the Agreement is in compliance with the requirements of 39 U.S.C. 3633 and that the Agreement is functionally equivalent to the baseline agreement. *Id.* The Postal Service therefore requests that the Commission add the Agreement to the GEPS 3 product. *Id.*

IV. Commission Action

The Commission establishes Docket No. CP2013–71 for consideration of matters raised by the Notice. Interested persons may submit comments on whether the Postal Service's filings are consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and subpart B of 39 CFR part 3020. Comments are due no later than July 8, 2013. The public portions of the Postal Service's filing can be accessed via the Commission's Web site, *http://www.prc.gov*. Information concerning access to non-public material is located in 39 CFR part 3007.

The Commission appoints Pamela A. Thompson to serve as Public Representative in the above captioned proceeding.

V. Ordering Paragraph

It is ordered:

1. The Commission establishes Docket No. CP2013–71 for consideration of the matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than July 8, 2013.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Pamela A. Thompson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–16266 Filed 7–5–13; 8:45 am]

BILLING CODE 7710–FW–P

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

[Notice—PCLOB–2013–04; Docket No. 2013–0004; Sequence No. 4]

Notice of Meeting

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Notice of a meeting.

SUMMARY: The Privacy and Civil Liberties Oversight Board will conduct a public workshop with invited experts, academics and advocacy organizations regarding surveillance programs operated pursuant to Section 215 of the USA PATRIOT Act and Section 702 of Foreign Intelligence Surveillance Act.

DATES: July 9, 2013 at 9:30 a.m.–4:30 p.m. (Eastern Time).

Comments: You may submit comments, identified by the docket number in the heading of this document by the following method:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Written comments may be submitted at any time prior to the closing of the docket at 11:59 p.m. Eastern Time on August 1, 2013.

All comments will be made publicly available and posted without change. Do not include personal or confidential information.

ADDRESSES: Mayflower Renaissance Hotel Washington, 1127 Connecticut Ave. NW., Washington DC 20036. Facility's location is near Farragut North Metro station.

FOR FURTHER INFORMATION CONTACT: Susan Reingold, Chief Administrative Officer, 202–331–1986.

SUPPLEMENTARY INFORMATION:

Procedures for Public Participation

See also **Federal Register** at 78 FR 39021, published on June 28, 2013, for more information on workshop and the submission of comments. Docket number for comments is PCLOB–2013–0004.

The workshop will be open to the public. The Board is contemplating moderated panel discussions with invited experts, academics, and advocacy organizations. Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Susan Reingold, Chief Administrative Officer, 202–331–1986, at least 72 hours prior to the meeting date.

Dated: July 1, 2013.

Diane Janosek,

Chief Legal Officer, Privacy and Civil Liberties Oversight Board.

[FR Doc. 2013–16246 Filed 7–5–13; 8:45 am]

BILLING CODE 6820–B3–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens. The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

Under Section 12 of the Railroad Retirement Act, the Railroad Retirement Board (RRB) may pay benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or is a minor. A representative payee may be a court-appointed guardian, a statutory conservator or an individual selected by the RRB. The procedures pertaining to the appointment and responsibilities of a representative payee are prescribed in 20 CFR 266.

The forms furnished by the RRB to apply for representative payee status, and for securing the information needed to support the application follow. RRB Form AA–5, *Application for Substitution of Payee*, obtains

information needed to determine the selection of a representative payee who will serve in the best interest of the beneficiary. RRB Form G–478, *Statement Regarding Patient's Capability to Manage Benefits*, obtains information about an annuitant's capability to manage their own benefits. The form is completed by the annuitant's personal physician or by a medical officer, if the annuitant is in an institution. It is not required when a court has appointed an individual or institution to manage the annuitant's funds or, in the absence of such appointment, when the annuitant is a minor. The RRB also provides representative payees with a booklet at the time of their appointment. The booklet, RRB Form RB–5, *Your Duties as Representative Payee-Representative Payee's Record*, advises representative payees of their responsibilities under 20 CFR 266.9 and provides a means for the representative payee to maintain records pertaining to the receipt and use of RRB benefits. The booklet is provided for the representative payee's convenience. The RRB also accepts records that are kept by representative payee's as part of a common business practice.

Completion is voluntary. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (78 FR 23599 on April 19, 2013) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application to Act as Representative Payee

OMB Control Number: 3220–0052

Forms submitted: AA–5, G–478, and RB–5

Type of request: Revision of a currently approved collection

Affected public: Individuals or households; business or other for profit

Abstract: Under Section 12 of the Railroad Retirement Act, the Railroad Retirement Board (RRB) may pay benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or is a minor. The collection obtains information related to the representative payee application, supporting documentation and the maintenance of records pertaining to the receipt and use of benefits.

Changes proposed: The RRB is proposing non-burden impacting editorial changes to Form AA–5 and the RB–5 booklet. No changes are proposed for Form G–478.

THE BURDEN ESTIMATE FOR THE ICR IS AS FOLLOWS:

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–5	*3,000*		*850.0*
Individuals	2,250	17	637.5
Institutions	750		212.5
G–478	2,000	6	200.0
RB–5	*15,300*		*15,300*
Individuals	11,475	60	11,475
Institutions	3,825		3,825
Total	20,300		16,350

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV*.

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or Charles.Mierzwa@RRB.GOV and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2013–16187 Filed 7–5–13; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30585]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 28, 2013.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June 2013. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 23, 2013, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Exemptive Applications Office, 100 F Street NE., Washington, DC 20549–8010.

Glickenhaus Value Portfolios 1996 Equity Collection [File No. 811–7423]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On February 23, 1999, applicant made a liquidating distribution to its shareholders, based on net asset value.

Filing Dates: The application was filed on February 25, 2013, and amended on June 13, 2013.

Applicant's Address: 546 Fifth Ave., New York, NY 10022.

Empire Builder Tax Free Bond Fund [File No. 811–3907]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Neuberger Berman New York Municipal Income Fund and, on March 8, 2013, made a final distribution to its shareholders based on net asset value. Expenses of $162,230 incurred in connection with the reorganization were paid by Neuberger Berman Management LLC, the investment adviser to the acquiring fund.

Filing Date: The application was filed on May 30, 2013.

Applicant's Address: Neuberger Berman Income Funds, 605 Third Ave., 2nd Floor, New York, NY 10158.

Jacob Funds II [File No. 811–7881]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Jacob Funds Inc. and, on November 9, 2012, made a final distribution to its shareholders based on net asset value. Expenses of $372,095 incurred in connection with the reorganization were paid by applicant and Jacob Asset Management of New York LLC, applicant's investment adviser.

Filing Date: The application was filed on May 24, 2013.

Applicant's Address: 399 Park Ave., 4th Floor, New York, NY 10022.

Salient Alternative Strategies Fund [File No. 811–22388]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Salient Alternative Strategies I Fund and, on March 31, 2013, made a final distribution to its shareholders based on net asset value. Expenses of $16,244 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on May 21, 2013.

Applicant's Address: c/o Salient Advisors, L.P., 4265 San Felipe Rd., Suite 800, Houston, TX 77027.

Armstrong Associates Inc. [File No. 811–1548]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 10, 2013, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $99,804 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on May 23, 2013.

Applicant's Address: 750 North St. Paul St., Suite 1300, Dallas, TX 75201.

Oppenheimer Transition 2010 Fund [File No. 811–21920]

Oppenheimer Transition 2015 Fund [File No. 811–21921]

Oppenheimer Transition 2020 Fund [File No. 811–21923]

Oppenheimer Transition 2030 Fund [File No. 811–21924]

Oppenheimer Transition 2050 Fund [File No. 811–22150]

Oppenheimer Transition 2040 Fund [File No. 811–22151]

Oppenheimer Transition 2025 Fund [File No. 811–22152]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. The applicants have transferred their assets to series of Oppenheimer Portfolio Series and, between October 5, 2012, and November 2, 2012, each applicant made a final distribution to its shareholders based on net asset value. Expenses of $39,605, $41,694, $45,138, $49,893, $43,318, $45,271, and $41,549, respectively, incurred in connection with the reorganizations were paid by each applicant.

Filing Date: The applications were filed on May 31, 2013.

Applicants' Address: 6803 S. Tucson Way, Centennial, CO 80112.

Madison Mosaic Equity Trust [File No. 811–3615]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to corresponding series of Madison Funds and, on April 19, 2013, made a final distribution to its shareholders based on net asset value. Expenses of $176,003 incurred in connection with the reorganization were paid by Madison Investment Advisors, LLC, applicant's investment adviser.

Filing Date: The application was filed on May 2, 2013.

Applicant's Address: 500 Science Dr., Madison, WI 53711.

Global Chartist Fund, LLC [File No. 811–22617]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has fewer than one hundred beneficial owners and does not propose to make a public offering of its securities. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on May 29, 2013, and amended on June 6, 2013.

Applicant's Address: 85 Broad St., 24th Floor, New York, NY 10004.

Lord Abbett Stock Appreciation Fund [File No. 811–9597]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Lord Abbett Growth Leaders Fund, a series of Lord Abbett Securities Trust, and on March 22, 2013, made a distribution to its shareholders based on net asset value. Expenses of $138,196 incurred in connection with the reorganization were paid by Lord Abbett & Co. LLC, investment adviser to the applicant.

Filing Date: The application was filed on June 5, 2013.

Applicant's Address: 90 Hudson St., Jersey City, NJ 07302.

Persimmon Growth Partners Fund LP [File No. 811–22457]

Persimmon Growth Partners Investor Fund [File No. 811–22458]

Summary: Each applicant, a closed-end investment company seeks an order declaring that it has ceased to be an investment company. On June 11, 2013, each applicant made final liquidating distributions to its shareholders, based on net asset value. Expenses of $31,498 and $52,742, respectively, incurred in connection with the liquidations were paid by each applicant.

Filing Dates: The applications were filed on March 11, 2013, and amended on June 21, 2013.

Applicants' Address: 1777 Sentry Pkwy. West, Gwynedd Hall, Suite 102, Blue Bell, PA 19422.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16218 Filed 7–5–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

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 Closed Meeting on Thursday, July 10, 2013 at 4:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

institution and settlement of injunctive actions;

adjudicatory matters; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: July 3, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16481 Filed 7–3–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69899; File No. SR–EDGX–2013–24]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

July 1, 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 June 26, 2013, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] and non-Members of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange maintains logical ports for order entry (FIX, HP–API), drop copies (DROP), EdgeRisk and market data (collectively, "Direct Logical Ports").[4] In SR–EDGX–2012–36, the Exchange reduced the number of free Direct Logical Ports from ten (10) sessions to five (5) sessions.[5] The Exchange proposes to reduce the quantity of free Direct Logical Ports from five (5) sessions to two (2) sessions. The Exchange would assess a monthly fee per logical port for Members and non-Members that maintain three or more Direct Logical Ports. In addition, the Exchange, pursuant to an information circular dated June 4, 2013, communicated to Members and non-Members that the Exchange would propose these changes in a subsequent filing with the Securities and Exchange Commission.[6]

The Exchange further proposes to make a ministerial change to its fee schedule by changing the name of its HP–API logical ports from "HP–API" to "Edge XPRS (HP–API)."

The Exchange proposes to implement these amendments to its fee schedule on July 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as the proposed rule changes are designed to provide for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using the Exchange's facilities.

The Exchange believes its proposal to amend its fee schedule to reduce the quantity of free Direct Logical Ports from five sessions to two sessions represents an equitable allocation of reasonable dues, fees and other charges because the Exchange has recently implemented several infrastructure enhancements that optimized processing speed and capacity per port, thereby requiring fewer ports to communicate the same information. In addition, the proposal to reduce the number of logical ports from five to two will offset the costs of necessary hardware, infrastructure expenses, maintenance fees and staff support costs in operating a national securities exchange. The revenue generated from its proposal will also pay for the technical infrastructure and operating expenses of logical ports along with administrative and infrastructure costs associated with allowing Members and non-Members to establish logical ports to connect to the Exchange's systems. The Exchange also believes that reducing the quantity of free Direct Logical Ports from five to two sessions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer that has been admitted to membership in the Exchange.

[4] *See* Securities Exchange Act Release No. 69670 (May 30, 2013) 78 FR 33871 (June 5, 2013) (SR–EDGX–2013–18) (adding EdgeRisk ports to the list of logical ports offered by the Exchange); Securities and Exchange Act Release No. 64963 (July 26, 2011), 76 FR 45895 (August 1, 2011) (SR–EDGX–2011–21) (discussing the Exchange's proposal to include logical ports that receive market data among the types of logical ports that the Exchange assesses a monthly fee to Members and non-Members).

[5] *See* Securities and Exchange Act Release No. 67741 (August 28, 2012), 77 FR 53950 (September 4, 2012) (SR–EDGX–2012–36) (discussing the Exchange's proposal to reduce its number of free logical ports from ten (10) to five (5)).

[6] *See* Direct Edge Trading Notice #13–23: Logical Port Fee Changes Effective July 1, 2013, *http://www.directedge.com/About/Announcements/ViewNewsletterDetail.aspx?NewsletterID=1010.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

will promote efficient use of the ports by market participants, not only helping the Exchange to continue to maintain and improve its infrastructure, market technology, and services, but also encourage Members and non-Members to request and enable only the ports that are necessary for their operations related to the Exchange.

The Exchange believes that it is reasonable to reduce the number of free logical ports available to Members and non-Members because such practice is consistent with that of other exchanges, such as BATS Exchange, Inc., BATS Y-Exchange, Inc. and the NASDAQ Stock Exchange LLC.[9] Additionally, Members and non-Members may opt to disfavor the Exchange's pricing if they believe that alternative venues offer them better value. Accordingly, if the Exchange were to charge excessive fees, the Exchange would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

Lastly, the Exchange believes that the proposed reduction in quantity of free ports is non-discriminatory because it applies uniformly to Members and non-Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed amendment to its fee schedule represents a significant departure from previous Exchange fees or such fees offered by the Exchange's competitors.[10] Accordingly, the Exchange believes that reducing the quantity of free Direct Logical Ports from five sessions to two sessions would allow the Exchange to remain competitive with other market centers and thus would not burden intermarket competition.

The Exchange believes its proposal would not burden intramarket competition because the proposed rule change would apply uniformly to all Members and non-Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–EDGX–2013–24 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–EDGX–2013–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2013–24 and should be submitted on or before July 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16226 Filed 7–5–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69897; File No. SR–NASDAQ–2013–092]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rule 4120(c)(7) To Modify the Parameters for Releasing IPO Securities for Trading Pursuant to the IPO Halt Cross Under NASDAQ Rule 4753

July 1, 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 June 25, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange"), filed with

[9] See BATS, BATS BZX & BYX Exchange Fee Schedules, *http://batstrading.com/FeeSchedule/* (charging a monthly fee of $400 per logical port other than a Multicast PITCH Spin Server Port or GRP Port). *See also* NASDAQ, Price List-Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2* (charging a monthly fee of $500 per logical port pair for FIX/OUCH/RASHPort/DROP connectivity to NY-Metro and Mid-Atlantic Datacenters).

[10] *See* BATS, BATS BZX & BYX Exchange Fee Schedules, *http://batstrading.com/FeeSchedule/* (charging a monthly fee of $400 per logical port other than a Multicast PITCH Spin Server Port or GRP Port). *See also* NASDAQ, Price List-Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2* (charging a monthly fee of $500 per logical port pair for FIX/OUCH/RASHPort/DROP connectivity to NY-Metro and Mid-Atlantic Datacenters).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NASDAQ Rule 4120(c)(7)[3] to modify the parameters for releasing IPO securities for trading pursuant to the IPO Halt Cross under NASDAQ Rule 4753. NASDAQ will implement the proposed changes in mid-to-late August 2013. Public notice of the implementation date will be provided by NASDAQ in an Equity Trader Alert at least one week prior to implementation.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4120. Limit Up-Limit Down Plan and Trading Halts

(a)–(b) No change.

(c) Procedure for Initiating and Terminating a Trading Halt

(1)–(6) No change.

(7)(A) A trading halt or pause initiated under Rule 4120(a)(1), (4), (5), (6), (9), (10), (11), or (12)(F) shall be terminated when Nasdaq releases the security for trading. For any such security listed on Nasdaq, prior to terminating the halt or pause, there will be a 5-minute Display Only Period during which market participants may enter quotations and orders in that security in Nasdaq systems. In addition, in instances where a trading halt is in effect prior to the commencement of the Display Only Period, market participants may enter orders in a security that is the subject of the trading halt on Nasdaq and designate such orders to be held until the beginning of the Display Only Period. Such orders will be held in a suspended state until the beginning of the Display Only Period, at which time they will be entered into the system. At the conclusion of the 5-minute Display Only Period, the security shall be released for trading unless Nasdaq extends the Display Only Period for an additional 1-minute period pursuant to subparagraph (C) below. At the conclusion of the Display Only Period, trading shall immediately resume pursuant to Rule 4753.

(B) A trading halt initiated under Rule 4120(a)(7) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 15-minute Display Only Period during which market participants may enter quotes and orders in that security in Nasdaq systems. In addition, beginning at 4:00 a.m., market participants may enter orders in a security that is the subject of an Initial Public Offering *("IPO")* on Nasdaq and designate such orders to be held until the beginning of the Display Only Period, at which time they will be entered into the system. [At]*After* the conclusion of the 15-minute Display Only Period *(the time after conclusion of the Display Only Period is hereafter referred to as the "Pre-Launch Period"),* the security shall be released for trading *by Nasdaq at such time as both of the following conditions are simultaneously met: (i) Nasdaq receives notice from the underwriter of the IPO that the security is ready to trade and (ii) there is no order imbalance in the security as defined in subparagraph (C) below. The underwriter, with concurrence of Nasdaq, may determine at any point during the IPO Halt Cross process up through the Pre-Launch Period to postpone and reschedule the IPO.*[unless Nasdaq extends the Display Only Period for up to six additional 5-minute Display Only Periods pursuant to subparagraph (C) or (D) below. At the conclusion of the Display Only Period(s), there shall be an additional delay of between zero and 15 seconds (randomly selected) and then trading shall resume pursuant to Rule 4753.] *Market participants may continue to enter orders and order cancellations for participation in the cross auction during the Pre-Launch Period up to the point that the cross auction process commences.*

(C) If at the end of a Display Only Period, Nasdaq detects an order imbalance in the security, Nasdaq will extend the Display Only Period as permitted under subparagraph[s] (A) [and (B) above]. *In the case of subparagraph (B), any order imbalance during the Pre-Launch Period will result in a delay of the release for trading of the IPO until the end of the order imbalance and satisfaction of the other requirements for release of the IPO contained in subparagraph (B).* Order imbalances *under subparagraph (A)* shall be established when (i) the Current Reference Prices, as defined in Rule 4753(a)(2)(A), disseminated 15 seconds and immediately prior to the end of the Display Only Period differ by more than the greater of 5 percent or 50 cents, or (ii) all buy or sell market orders will not be executed in the cross. *Order imbalances under subparagraph (B) shall be established when (i) the Current Reference Prices, as defined in Rule 4753(a)(2)(A), disseminated 15 seconds and immediately prior to commencing the release of the IPO for trading during the Pre-Launch Period differ by more than the greater of 5 percent or 50 cents, or (ii) all buy or sell market orders will not be executed in the cross.*

[(D) At any time within the last five minutes prior to the end of a Display Only Period, Nasdaq may extend the Display Only Period as permitted under subparagraph (B) above at the request of an underwriter of an IPO.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4120(c)(7)(B) and (C) and to delete Rule 4120(c)(7)(D) to modify the process by which a company's securities approved for listing on NASDAQ in an initial public offering ("IPO") are released for trading pursuant to NASDAQ's IPO Halt Cross under NASDAQ Rule 4753. Rule 4120(c)(7)(B) governs the orderly launch of trading of IPO securities approved for listing on NASDAQ in an initial public offering. Rule 4120(c)(7)(B), provides a fifteen-minute "Display Only Period" prior to terminating the halt imposed on an IPO security before it opens for trading for the first time on NASDAQ pursuant to the IPO Halt Cross. Under Rule 4120(c)(7)(B), at the conclusion of the fifteen-minute Display Only Period NASDAQ may extend the period for up to six additional five-minute Display Only Periods, pursuant to the basis described under Rule 4120(c)(7)(C). Rule 4120(c)(7)(C) allows an extension when NASDAQ detects an order imbalance in the security. Rule 4120(c)(7)(D) permits NASDAQ to extend any of these Display-Only Periods for an additional five-minute Display Only Period (up to the maximum of six additional periods) at the request of an underwriter of the IPO.

NASDAQ believes that the existing rule has worked well in matching investor interest in an auction to establish the price at which the security is released for trading on NASDAQ. The rule also recognizes the critical role played by the underwriter, with its unique knowledge of the issuer and the market, in establishing the appropriate

[3] The rule text reflects changes that are effective as of June 14, 2013, but not yet operative. *See* SR–NASDAQ–2013–086 (pending publication in the **Federal Register**). The text of the rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

time to release the security for trading. While issuers and underwriters have provided positive feedback on the current process that NASDAQ believes has worked successfully in hundreds of IPOs, we have periodically heard suggestions regarding potential changes to the IPO Halt Cross. For example, certain market participants have questioned whether the six extension limit to the Display Only Period—limiting the launch process to a total of 30 minutes—creates an unnecessary deadline within which the IPO must be launched or otherwise rescheduled. NASDAQ has had one situation where all six extensions have been used and several where four or five extensions have occurred and it is possible that underwriters in the future would want to extend beyond six Display Only Periods if permitted by the rule.

Others have questioned whether there should be more flexibility with respect to the Display Only Periods, which under the current rule can only be extended in fixed five-minute increments. The current rule would prevent trading from commencing if conditions improve within the five-minute period. NASDAQ agrees that the rule should be modified to permit the launch of trading whenever conditions are appropriate.

NASDAQ believes that its proposed changes to Rule 4120(c)(7) will increase its flexibility to commence trading when appropriate while retaining a transparent process that has been the hallmark of the rule. In particular, NASDAQ proposes to delete the requirement in Rule 4120(c)(7)(B) that limits the number of extensions of the Display Only Period to six five-minute periods. Instead, IPOs coming out of the initial 15-minute Display Only Period would enter what is defined as the "Pre-Launch Period" that will not be of a fixed duration. The Pre-Launch Period will continue until:

(1) the IPO is released when the following two conditions are simultaneously met:

- Nasdaq receives notice from the underwriter of the IPO that the security is ready to trade, and
- there is no order imbalance in the security (as discussed below); *or*

(2) the underwriter, with concurrence of Nasdaq, determines at any point during the IPO Halt Cross process up through the Pre-Launch Period to postpone and reschedule the IPO.

The underwriter's involvement in timing the commencement of trading is consistent with current practice. In administering the IPO cross process since 2006, NASDAQ has found that underwriters possess valuable information about the pending IPO given their unique position in the market, including the status of IPO orders on the underwriter's book. NASDAQ believes that it is in the best interest of the markets to give underwriters input into the timing of the IPO Halt Cross to help to ensure the fair and orderly launch of trading in the IPO security. The condition that there be no order imbalance in the security is designed to ensure that the security price is reasonably stable at the time trading commences. Under Rule 4120(c)(7)(C), an order imbalance occurs when (1) the Current Reference Prices [4] disseminated 15 seconds and immediately prior to the end of the Display Only Period differ by more than the greater of 5 percent or 50 cents, or (2) all buy or sell market orders will not be executed in the cross. This protection, as modified below to extend to the Pre-Launch Period, would also prevent circumstances where a misunderstanding by the underwriter as to the state of the order book risked launching trading at a time of material volatility in the book for the security. As is currently the case, this measurement would be calculated by the IPO Halt Cross system, which would automatically prevent launch of the IPO when an order imbalance existed. The proposed language allowing an underwriter to postpone and reschedule the IPO with the concurrence of NASDAQ is designed to allow flexibility if unforeseen market events make it inadvisable to proceed with the IPO.

NASDAQ also proposes to modify the language of Rule 4120(c)(7)(C) to extend the protections in the event of an order imbalance to the Pre-Launch Period. The proposed modification is not designed to substantively modify how order imbalances are handled in the IPO Halt Cross. It is instead designed to apply the same principles to the Pre-Launch Period which, unlike in the existing Display Only Period, has no fixed duration. Therefore, the existing language with respect to element (1) of the definition of order imbalance—measuring two points in time 15 seconds before and immediately before the end of the period—would not work during the Pre-Launch Period. The proposed language would use a rolling measurement point during the Pre-Launch Period and compare the Current Reference Price at that point in time against the Current Reference Price 15 seconds earlier. The system would prevent launch of the IPO in the event of an order imbalance at any point in the Pre-Launch Period until the end of the order imbalance, whereupon the IPO would launch once the requirements of Rule 4120(c)(7)(B) are satisfied.[5]

NASDAQ proposes to delete several elements of the existing Rule 4120(c)(7). The existing language in Rule 4120(c)(7)(B) that provides for a randomization period of between zero and 15 seconds at the conclusion of the Display Only Period would be eliminated. The randomization period was designed to reduce the risk that market participants might try to game the system around the end of a Display Only Period, the timing of which is fixed in the rule. Because the proposed changes would eliminate fixed Display Only Periods and make it harder for someone with malicious intent to time activity to influence the IPO Halt Cross, NASDAQ believes that the current randomization language is duplicative and unnecessary. NASDAQ also proposes to delete Rule 4120(c)(7)(D) that memorializes the ability of underwriters to request an extension of the Display Only Period. The underwriter's role in the process has been moved to the proposed language of Rule 4120(c)(7)(B), as discussed above.

NASDAQ's proposed changes would not alter pricing and cross information publicly available to market participants seeking to participate in the IPO Halt Cross. NASDAQ would continue to disseminate throughout the Display Only Period and the Pre-Launch Period updated electronic messages in five second intervals containing information on the eligible interest and the price at which such interest would execute at time of dissemination.[6] Market participants will continue to be able to submit and cancel orders during the Pre-Launch Period as they are currently able to do during Display Only Periods and any extensions. Messages to submit or cancel orders will not be eligible to participate in the cross auction once the cross auction process commences, as is currently the case.

The changes to NASDAQ's IPO process are consistent with how we understand IPOs are handled at other exchanges. For example, we understand

[4] The Current Reference Price is defined in Rule 4753(a)(2)(A) as the price at which the maximum number of shares can be paired. In situations where more than one price exists, the rule establishes the Current Reference Price in a number of scenarios.

[5] Order imbalances in crosses other than IPO Halt Crosses would continue to be handled in the same manner as is currently the case under Rule 4120(c)(7)(A).

[6] The information disseminated in accordance with Rule 4753(a)(2) includes the Current Reference Price, the shares paired at the Current Reference Price, any order imbalance (shares that are not paired), the buy/sell direction of any imbalance and the indicative price at which the cross would occur at that point in time.

that the New York Stock Exchange ("NYSE") operates a similar process that includes substantial input from underwriters and does not contain fixed time limits within which to launch the IPO.[7] During this indefinite period the NYSE disseminates similar information concerning the state of the auction as that disseminated by NASDAQ.[8] Similarly, BATS Exchange permits extension to its IPO Auction Quote-Only period upon the request of an underwriter and for other reasons similar to those contained in Rule 4120(c)(7)(B) and (C), with no limit on the number or length of extensions.[9] We believe these changes to NASDAQ's IPO Halt Cross will assist market participants and underwriters who participate in IPOs on several exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change promotes this goal by establishing in NASDAQ's rules an IPO process that protects investors and the public interest by ensuring an orderly opening of trading in IPOs on NASDAQ and eliminates unnecessary fixed time limits that could impact the success of IPOs. NASDAQ also believes that the proposal is consistent with rules of other exchanges and will avoid confusion among participants in the process. NASDAQ notes that the criteria it applies in launching IPOs are applied consistently to every IPO, and therefore do not permit NASDAQ to discriminate in any manner.

[7] NYSE Rule 123D. *See* NYSE, *Inside the IPO Process*, available at *https://usequities.nyx.com/page/inside-nyse-ipo-process*.

[8] NYSE Rule 15(a).

[9] BATS Exchange Chapter XI, Rule 11.23(d)(2)(B)(ii).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the proposal is irrelevant to competition because it is not driven by, nor impactful to, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NASDAQ–2013–092*. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–092 and should be submitted on or before July 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16228 Filed 7–5–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(a)(ii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69904; File No. SR–NYSEArca–2013–64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Change the Monthly Fees for the Use of Certain Ports

July 1, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 28, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Fee Schedule") to change the monthly fees for the use of certain ports. The Exchange proposes to implement the fee changes on July 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE Arca Equities Fee Schedule to change the monthly fees for the use of certain ports. The Exchange proposes to implement the fee changes on July 1, 2013.[4]

The Exchange currently makes ports available that provide connectivity to the Exchange's trading systems (i.e., ports for entry of orders and/or quotes ("order/quote entry ports")) and charges $200 per port per month.[5] The Fee Schedule currently provides that no fees apply to ports in the backup datacenter that are not utilized during the relevant month.

The Exchange proposes that the $200 fee per port per month would apply to users with five or fewer order/quote entry ports and that the fee for users with more than five order/quote entry ports would be $500 per port per month, including for the first five ports.[6] The Exchange is proposing this change in order to permit the Exchange to offset, in part, its infrastructure costs associated with making such ports available. The proposed change would also encourage users to become more efficient with, and reduce the number of, their order/quote ports, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize with respect to managing its own infrastructure. In this regard, as users decrease the number of order/quote ports that they utilize, the Exchange would similarly be able to decrease the amount of its hardware that it is required to support to interface with such ports.

The Exchange also proposes to add text to the Fee Schedule to add further detail about charges for ports in the backup datacenter. Specifically, the Exchange proposes to add text stating that no fee will apply to ports in the backup datacenter that are utilized when the primary datacenter is unavailable but that a fee will apply if such ports are utilized when the primary datacenter is available.[7]

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change to the monthly rates is reasonable because the fees charged for order/quote entry ports are expected to permit the Exchange to offset, in part, its infrastructure costs associated with making such ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. In this regard, the Exchange believes that the proposed fees are competitive with those charged by other exchanges.[10] The proposed change is also reasonable because the proposed per port rates would encourage users to become more efficient with, and reduce the number of, ports used for order/quote entry, thereby resulting in a corresponding

[4] The Exchange notes that billing for ports is based on the number of ports on the third business day prior to the end of the month. In addition, the level of activity with respect to a particular port does not affect the assessment of monthly fees, such that, except for ports that are not charged and ports considered established for backup purposes, even if a particular port is not used, a port fee still applies. Additionally, separate port fees are charged for an order/quote entry port that is authorized for both equity and option order/quote entry.

[5] The Fee Schedule provides that users of the Exchange's Risk Management Gateway service ("RMG") are not charged for order/quote entry ports if such ports are designated as being used for RMG purposes. *See* Securities Exchange Act Release No. 68227 (November 14, 2012), 77 FR 69679 (November 20, 2012) (SR–NYSEArca–2012–123).

[6] For example, a user with five ports would be charged $200 per port per month for a total of $1,000 per month for all five ports. A user with six ports would be charged $500 per port per month, including for the first five ports, for a total of $3,000 per month for all six ports.

[7] The Exchange notes that it monitors usage of backup ports for billing purposes. Since the primary datacenter in Mahwah, New Jersey, was established, it has always been available, and the backup datacenter has not yet been utilized for disaster recovery.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] For example, the charge on the NASDAQ Stock Market LLC ("NASDAQ") for a FIX Trading Port is $500 per port per month. *See* Nasdaq Rule 7015. A separate charge for Pre-Trade Risk Management ports also is applicable, which ranges from $400 to $600 and is capped at $25,000 per firm per month. *See* Nasdaq Rule 7016. EDGA Exchange, Inc. ("EDGA") and EDGX Exchange, Inc. ("EDGX") also each charge $500 per port per month.

increase in the efficiency that the Exchange would be able to realize with respect to managing its own infrastructure.

The Exchange also believes that these changes to the fees are equitable and not unfairly discriminatory because they would apply to all users of order/quote entry ports on the Exchange, subject to the exceptions noted above.[11] The Exchange also believes that it is equitable and not unfairly discriminatory to charge a higher fee to users with more than five order/quote entry ports, as compared to users with five or fewer order/quote entry ports, because the Exchange believes that users with more than five order/quote entry ports would be incentivized to become more efficient with their utilization of ports.[12]

The Exchange has considered multiple factors in proposing the tiered approach to order/quote entry port pricing, including that the fee increase would occur once a user has more than five order/quote entry ports. The Exchange believes that this approach to pricing is equitable and not unfairly discriminatory, including for the following reasons. Specifically, the Exchange believes that there is a correlation between the number of order/quote entry ports utilized by users and the level of trading volume sent to the Exchange by such users, such that a user with significant trading activity sent to the Exchange likely utilizes a greater number of order/quote entry ports than a user with minimal trading activity sent to the Exchange. However, despite this correlation, and regardless of the amount of activity a user sends to the Exchange via its order/quote entry ports, or the size of the firm, every user that connects its systems to the Exchange's trading systems requires at least one port for order/quote entry. Many users also maintain a certain number of additional order/quote entry ports for redundancy and/or hardware configuration purposes. These users have a limited opportunity to become more efficient with their use of ports. Accordingly, the Exchange believes that five is a reasonable number of ports that would permit a user that sends a lesser amount of trading activity to the Exchange to manage its ports in such a way that it could sufficiently address these redundancy and configuration concerns without crossing the threshold for which higher fees apply.

In this regard, the Exchange anticipates that, as a result of the proposed increase of the order/quote entry port fee under the tiered structure, users would become more efficient with their utilization of order/quote entry ports and would decrease the number of order/quote entry ports so as to qualify for the $200 rate per port. Such a decrease in order/quote entry port use would result in a corresponding decrease in the infrastructure that the Exchange is required to support for connectivity to its trading systems and a decrease in the costs related thereto.

The Exchange also believes that the proposed change to the Fee Schedule concerning backup datacenter ports is reasonable because it will result in ETP Holders not being charged when the ports are solely used for backup purposes, which the Exchange believes will encourage appropriate business continuity planning. However, if a port in the backup datacenter were used for quote or order entry when the primary datacenter was available (i.e., not for backup purposes), then it would be charged like any other port. The Exchange believes that this is also equitable and not unfairly discriminatory because it would apply equally to all users that request ports in the backup datacenter and, furthermore, because it would contribute to the fair, efficient, and appropriate use of the backup datacenter.

For the reasons above, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change will permit the Exchange to set fees for ports that are competitive with those charged by other exchanges.[14] Moreover, the Exchange believes that charging different rates for users with five or fewer order/quote entry ports as compared to users with more than five ports would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange believes that a reduction in the number of order/quote entry ports would result in a decrease in the infrastructure that the Exchange is required to support for connectivity to its trading systems. This would also provide incentive for users to become more efficient with their use of ports and could therefore result in such users becoming more competitive due to decreased costs. In this regard, the Exchange notes that at least one of the Exchange's competitors charges different rates depending on the number of ports utilized.[15]

Additionally, adding detail to the Fee Schedule to provide that no fee will apply to ports in the backup datacenter that are utilized when the primary data center is unavailable, but that a fee will apply when a port in the backup datacenter is utilized when the primary datacenter is available, will provide better notice to ETP Holders and encourage them to only use the backup datacenter for its intended purpose, which is to help preserve business continuity and competition if the Exchange's primary datacenter were unavailable.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[16] of the Act and subparagraph (f)(2) of Rule 19b–4[17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

[11] *See supra* note 5.

[12] The Exchange also notes that at least one of its competitors charges different rates depending on the number of ports utilized. Specifically, EDGA and EDGX each provide the first five ports for free.

[13] 15 U.S.C. 78f(b)(8).

[14] *See supra* note 10.

[15] *See supra* note 12.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–64. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–64, and should be submitted on or before July 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16233 Filed 7–5–13; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(2)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69903; File No. SR–CHX–2013–12]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Single-Sided Order Fees and Credits and the Order Cancellation Fee

July 1, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 26, 2013, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

CHX proposes to amend its Schedule of Participant Fees and Assessments (the "Fee Schedule") to amend the Single-Sided Order Fees and Credits and the Order Cancellation Fee. The Exchange proposes to implement the fee changes on July 1, 2013. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section E of the Fee Schedule, effective July 1, 2013. Specifically, the Exchange proposes to eliminate references in Sections E.1 and E.8 to "Derivative Securities Products" ("DSPs") and "Non-Derivative Securities Products" ("Non-DSPs") and to eliminate references in Section E.1 to "Regular" Trading Session and "Early and Late" Trading Sessions. Moreover, the Exchange proposes to amend Section E.1 to set the liquidity providing fee for all Tape A, B, and C securities priced greater than or equal to $1.00/share at $0.00250/share and the Liquidity Removing Fee for all Tape A, B, and C securities priced greater than or equal to $1.00/share at $0.0030/share.

Current Section E.1

On November 2, 2012, the Exchange adopted current Section E.1 of the Fee Schedule,[4] amended in February 2013,[5] which permits twenty-four (24) distinct sets of credits and fees. Specifically, the Section E.1 fee table distinguishes between "Regular" Trading Session and "Early and Late" Trading Sessions and divides each trading session into Tape A, B, and C securities. Moreover, each Tape is divided into DSPs and Non-DSPs and each set of DSPs and Non-DSPs are further divided into securities priced greater than or equal to $1.00/share or those that are priced less than $1.00/share.

With respect to the current values of the credits and fees of Section E.1, for transactions in Tape A and Tape B Non-DSPs priced greater than or equal to $1.00/share that are executed in the Regular Trading Session, the current Fee Schedule gives no credit for providing liquidity, and charges a $0.0030/share Liquidity Removing Fee. For transactions in Tape A and Tape B DSPs

[19] 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. 68182 (November 8, 2012), 77 FR 68167 (November 15, 2012) (SR–CHX–2012–16).

[5] *See* Securities Exchange Act Release No. 68894 (February 15, 2013), 78 FR 11258 (February 15, 2013) (SR–CHX–2013–06).

priced greater than or equal to $1.00/share that are executed in the Regular Trading Session, the current Fee Schedule gives a credit of $0.0022/share for providing liquidity, and charges a $0.0030/share Liquidity Removing Fee. For transactions in Tape C DSPs and Non-DSPs priced greater than or equal to $1.00/share that are executed in the Regular Trading Session, the current Fee Schedule gives a credit of $0.0001/share for providing liquidity, and charges a $0.0006/share Liquidity Removing Fee. Additionally, for transactions in all securities priced greater than or equal to $1.00/share that are executed in the Early and Late Trading Session, the current Fee Schedule gives a credit of $0.0022/share for providing liquidity, and charges a $0.0030/share Liquidity Removing Fee. Finally, for transactions in all securities priced less than $1.00/share that are executed in the Regular Trading Session, or the Early and Late Trading Session, the current Fee Schedule gives a credit of $0.00009/share for providing liquidity, and charges a fee of 0.30% of trade value for removing liquidity.

Proposed Section E.1

The Exchange now proposes to amend the Section E.1 fee table to reduce the number of distinct sets of credits and fees, to set the Liquidity Providing Credit for all Tape A, B, and C securities priced greater than or equal to $1.00/share at $0.00250/share, and to set the Liquidity Removing Fee for all Tape A, B, and C securities priced greater than or equal to $1.00/share at $0.0030/share.

With respect to the Section E.1 fee table, the Exchange proposes to remove all references to DSPs and Non-DSPs, while preserving the distinction between Tape A, B, and C security types that are priced greater than or equal to $1.00/share and those priced less than $1.00/share. In addition, the Exchange proposes to eliminate the current distinction between "Regular" Trading Session and "Early and Late" Trading Sessions, and adopt a set of credit and fee values, irrespective of the trading session in which the transaction occurred.

With respect to the Liquidity Providing Credit, the Exchange proposes to set the credit at $0.00250/share for all Tape A, B, and C securities priced greater than or equal to $1.00/share. Specifically, the credit for Tapes A and B DSP securities will increase from $0.00220/share to $0.00250/share, Tapes A and B Non-DSP securities will increase from $0.00/share to $0.00250/share, and all Tape C securities will increase from $0.00010/share to $0.00250/share. For transactions in all security types priced less than $1.00/share, the Exchange will maintain the current Liquidity Providing Credit of $0.00009/share.

With respect to the Liquidity Removing Fee, the Exchange proposes to set the fee at $0.0030/share for all Tape A, B, and C securities priced greater than or equal to $1.00/share. Specifically, the fee for Tapes A and B will remain the same, but the fee for Tape C will increase from $0.0006/share to $0.0030/share. For transactions in all security types priced less than $1.00/share, the Exchange will maintain the current Liquidity Removing Fee of 0.30% of trade value.

Moreover, the Exchange proposes to make non-substantive changes to the "Security Price" column to amend the security prices for Tapes A, B, and C securities to reflect a "$" sign in front of "1.00." Thus, the proposed security prices for each Tape A, B, and C securities will indicate "≥$1.00/share" for securities priced greater than or equal to $1.00/share and "< $1.00/share" for securities priced less than $1.00/share.

Given these changes, the Exchange proposes to amend paragraph (b) to replace "$0.0022/share" with "$0.0025/share" and eliminate references to "Derivative Securities Products" and the "Regular" Trading Session. Also, the Exchange proposes to delete current paragraph (c) as it relates to the current Liquidity Providing Credit in all securities paid for orders executed in the "Early or Late Trading Sessions," which is now obsolete. Finally, the Exchange proposes to change current paragraph (d) to proposed paragraph (c).

Since its last amendment to the Fee Schedule, the Exchange has found that the distinction between Tape A, B, and C security types provides sufficient granularity. Thus, the Exchange has determined that differentiating between DSPs and Non-DSPs, as well as the "Regular" Trading Session and "Early and Late" Trading Sessions, is unnecessary and overly particularized. Additionally, the Exchange believes that this new credit and fee structure will incentivize activity by Participants on the Exchange's trading facilities, encourage order flow, and allow the Exchange to remain competitive in today's orders marketplace. Moreover, the Exchange submits that increasing the Liquidity Providing Credit from $0.00220/share to $0.00250/share will further promote displayed liquidity on the Exchange.

Current Section E.8

On November 2, 2012, the Exchange adopted the current "Order Cancelation Fee (Regular Trading Session only)" section of its Fee Schedule,[6] amended in June 2013,[7] that incorporated, *inter alia*, references to Derivative and Non-Derivative Securities Products within Tape A, B, and C. Specifically, current Section E.8(b) provides for six different sets of Order Cancellation Fee values, for DSP and Non-DSPs in Tape A, B, and C securities.

Proposed Section E.8

The Exchange proposes to eliminate references to "Derivative Securities Products" and "Non-Derivative Securities Products" within Section E.8.[8] Specifically, the Exchange proposes to remove paragraphs titled "Tape A Non-Derivative Securities Products," "Tape B Non-Derivative Securities Products," and "Tape C Non-Derivative Securities Products" from Section E.8(b) of the Fee Schedule. Additionally, the Exchange proposes to delete the words "Derivative" and "Products" from the remaining three (3) paragraphs of Section E.8(b). As a result, the proposed Section E.8(b) will only make references to Tape A, B, and C securities, omitting any mention of DSPs and Non-DSPs.

Similar to the Section E.1, the Exchange has determined that differentiating between DSPs and Non-DSPs in the context of the Order Cancellation Fee is unnecessary and overly particularized. The Exchange submits that the proposed distinction between Tapes A, B, and C securities provides adequate granularity for the purposes of establishing the Order Cancellation Fee values.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls, and does not unfairly discriminate between customers, issuers, or broker dealers.

Specifically, with respect to Section E.1, since the proposed credit and fee

[6] *See* Securities Exchange Act Release No. 68219 (November 13, 2012), 77 FR 69673 (November 20, 2012) (SR–CHX–2012–15).

[7] *See* Securities Exchange Act Release No. 69701 (June 5, 2013), 78 FR 35082 (June 11, 2013) (SR–CHX–2013–11).

[8] Unlike proposed Section E.1, the Exchange proposes to maintain the applicability of the Order Cancellation Fee to the Regular Trading Session only.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

structure will continue to apply to all single-sided orders of 100 or more shares executed in the CHX Matching System, the Exchange believes that it will equitably allocate the credits and fees among Participants in a non-discriminatory nature, notwithstanding the omission of references to "DSP" and "Non-DSPs," as well as "Regular" and "Early and Late" Trading Sessions. Furthermore, the proposed values for the Liquidity Providing Credit of $0.00250/share and Liquidity Removing Fees of $0.0030/share for each of the security types priced greater than or equal to $1.00/share are reasonable, where the proposed Liquidity Providing Credit will be increased to the benefit of liquidity providers and the proposed Liquidity Removing Fee will not exceed the current value for Tape A and Tape B securities priced at or greater than $1.00/share. Moreover, the proposed fee values are generally similar to the fees of other exchanges, such as NASDAQ.[11]

With respect to Section E.8, the Exchange submits that removing references to "Derivative Securities Products" and "Non-Derivative Securities Products" will allow the Order Cancellation Fee to continue to be equitable and reasonable, as it does not impact the Order Cancellation Fee values nor does it impact to whom the fee is applicable.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposed changes to eliminate the distinction in Section E of the Fee Schedule between DSPs and Non-DSPs, the different trading sessions, and to set an across the board Liquidity Providing Credit of $0.00250/share and Liquidity Removing Fees of $0.0030/share for Tapes A, B, and C securities priced greater than or equal to $1.00/share contributes to the protection of investors and the public interest by simplifying the schedule of credits paid and fees assessed by the Exchange. Consequently, the proposed rule change is necessary and appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 thereunder [13] because it establishes or changes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

As fully discussed above, the Exchange believes that the proposed changes represent a fair and reasonable structure designed to create equable credit and fee amounts to incent activity among all Participants within the Exchange's trading facilities.

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–CHX–2013–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2013–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2013–12, and should be submitted on or before July 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16232 Filed 7–5–13; 8:45 am]

BILLING CODE 8011–01–P

[11] NASDAQ "Fees to Remove Liquidity, Shares Executed at or above $1.00" ranges from $0.0029/share to $0.0030/share and "Rebate to Add Displayed Liquidity, Shares Executed at or Above $1.00" ranges from $0.0020/share to $0.00305/share.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69901; File No. SR–Phlx–2013–70]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Schedule of Fees and Rebates for the Execution of Quotes and Orders on NASDAQ OMX PSX

July 1, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 25, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes changes to its schedule of fees and rebates for execution of quotes and orders on NASDAQ OMX PSX ("PSX"). Phlx proposes to implement the proposed rule change on July 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx is proposing two modifications to its schedule of fees and rebates for transactions occurring on PSX.[3] First, the Exchange currently charges a fee of $0.0028 per share executed for orders in securities listed on The NASDAQ Stock Market ("NASDAQ") or the New York Stock Exchange ("NYSE") entered through a PSX market participant identifier ("MPID") through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month. The Exchange also charges a fee of $0.0028 per share executed for orders in securities listed on NASDAQ or NYSE that are designated as eligible for routing, to the extent that such orders execute on PSX rather than routing. Orders that do not qualify for these discounts are charged $0.0030 per share executed. For orders in securities listed on exchanges other than NASDAQ and NYSE, however, the Exchange currently charges $0.0025 per share executed if entered through a PSX MPID through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month, and also charges $0.0025 per share executed for orders in securities listed on exchanges other than NASDAQ or NYSE that are designated as eligible for routing. The Exchange is proposing to change both of these fees to $0.0028 per share executed, so that the fees for accessing liquidity in all securities, regardless of listing venue, will be equivalent.[4]

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[3] The changes apply to securities priced at $1 or more per share.

[4] As is the case with securities listed on NASDAQ or NYSE, the fee for orders in securities listed on other venues that do not qualify for discounts is $0.0030 per share executed. This fee is not changing.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

The change with respect to the fee charged for orders in securities listed on venues other than NASDAQ or NYSE that are entered through a PSX MPID through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month is reasonable because it will make the applicable fee equivalent to the fee already charged with respect to orders entered by the same member organization with respect to securities listed on NASDAQ or NYSE. Moreover, the fee in question is consistent with the requirements of SEC Rule 610(c) under Regulation NMS.[7] In adopting that rule, the Commission found that fees not in excess of $0.0030 per share executed would promote the objective of equal regulation and preventing excessive fees.[8] The change is consistent with an equitable allocation of fees because the modified fee applicable to the volume tier in question remains lower than the fee charged to member organizations not achieving the tier, and therefore continues to provide a financial incentive for member organizations to achieve higher volume levels at PSX. The change is not unfairly discriminatory because the resulting fee is equivalent to the fee charged with respect to orders in securities listed on NASDAQ or NYSE. Finally, the fee change does not unduly burden competition because affected member organizations will continue to pay an access fee that is lower than the base rate of $0.0030 per share executed, and therefore their ability to compete will not be impacted; rather, they will continue to pay a comparatively lower fee that reflects a volume-based discount, conceptually similar to volume-based pricing incentives that are provided by numerous other trading venues.

The change with respect to the fee charged for routable orders in securities listed on venues other than NASDAQ or NYSE is reasonable because it will make the applicable fee equivalent to the fee already charged with respect to routable orders entered with respect to securities listed on NASDAQ or NYSE. Moreover, the fee in question is consistent with the requirements of SEC Rule 610(c) under Regulation NMS.[9] In adopting that rule, the Commission found that fees not in excess of $0.0030 per share executed would promote the objective of equal regulation and preventing excessive

[7] 17 CFR 242.610(c).

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37596 (June 29, 2005).

[9] 17 CFR 242.610(c).

fees.[10] The change is consistent with an equitable allocation of fees because the modified fee remains lower than the fee charged with respect to non-routable orders not qualifying for a volume discount, and therefore continues to provide a means by which member organizations not qualifying for a volume tier may achieve a rate more favorable than the undiscounted rate. The change is not unfairly discriminatory because the resulting fee is equivalent to the fee charged with respect to orders in securities listed on NASDAQ or NYSE. Finally, the fee change does not unduly burden competition because affected member organizations will continue to pay an access fee that is lower than the base rate of $0.0030 per share executed, and therefore their ability to compete will not be impacted; rather, they will continue to pay a comparatively lower fee that reflects a discount designed to encourage member organizations to use the routing services of PSX.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[11] Phlx notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, Phlx must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, Phlx believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, Phlx is instituting a limited fee increase, but one that is designed to make the fee schedule consistent across all securities. If the changes are unattractive to market participants, it is likely that PSX will lose market share as member organizations opt to trade securities at other execution venues. Accordingly, Phlx does not believe that the changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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) of the Act[12] and paragraph (f) of Rule 19b–4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2013–70 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–Phlx–2013–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–70 and should be submitted on or before July 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16229 Filed 7–5–13; 8:45 am]

BILLING CODE 8011–01–P

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37596 (June 29, 2005).

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69902; File No. SR–FINRA–2013–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook

July 1, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt the consolidated FINRA supervision rules. Specifically, the proposed rule change would (1) adopt FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) to largely replace NASD Rules 3010 (Supervision) and 3012 (Supervisory Control System), respectively; (2) incorporate into FINRA Rule 3110 and its supplementary material the requirements of NASD IM–1000–4 (Branch Offices and Offices of Supervisory Jurisdiction), NASD IM–3010–1 (Standards for Reasonable Review), Incorporated NYSE Rule 401A (Customer Complaints), and Incorporated NYSE Rule 342.21 (Trade Review and Investigation); (3) replace NASD Rule 3010(b)(2) (often referred to as the "Taping Rule") with new FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms); (4) replace NASD Rule 3110(i) (Holding of Customer Mail) with new FINRA Rule 3150 (Holding of Customer Mail); and (5) delete the following Incorporated NYSE Rules and NYSE Rule Interpretations: (i) NYSE Rule 342 (Offices—Approval, Supervision and Control) and related NYSE Rule Interpretations; (ii) NYSE Rule 343 (Offices—Sole Tenancy, and Hours) and related NYSE Rule Interpretations; (iii) NYSE Rule 351(e) (Reporting Requirements) and NYSE Rule Interpretation 351(e)/01 (Reports of Investigation); (iv) NYSE Rule 354 (Reports to Control Persons); and (v) NYSE Rule 401 (Business Conduct).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[3] FINRA is proposing to adopt new FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) and to delete NASD Rule 3010 (Supervision) (with the exception of 3010(e) (Qualifications Investigated) and 3010(f) (Applicant's Responsibility)) and NASD Rule 3012 (Supervisory Control System), on which they are largely based. The proposed rule change also would delete Incorporated NYSE Rule 342 and much of its supplementary material and interpretations as they are, in main part, either duplicative of, or do not align with, the proposed supervision requirements. The proposed rule change, however, would incorporate—on a tiered basis—provisions from Incorporated NYSE Rule 342. The details of the proposed rule change are described below.

(1) Proposed FINRA Rule 3110 (Supervision)

Proposed FINRA Rule 3110 is based primarily on existing requirements in NASD Rule 3010 and Incorporated NYSE Rule 342 relating to, among other things, supervisory systems, written procedures, internal inspections, and review of correspondence. Proposed FINRA Rule 3110 also would incorporate provisions in other NASD rules that pertain to supervision, including NASD Rule 3012.

(A) *Proposed FINRA Rule 3110(a) (Supervisory System)*

Proposed FINRA Rule 3110(a) would require a member to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with the applicable securities laws and regulations and FINRA and Municipal Securities Rulemaking Board ("MSRB") rules. The proposed rule provision is substantially similar to NASD Rule 3010(a) except for two revisions. First, proposed FINRA Rule 3110(a) would refer only to associated persons instead of the current reference in NASD Rule 3010(a) to each "registered representative, registered principal, and other associated person." Second, proposed FINRA Rule 3110(a) would require a member's supervisory system to be reasonably designed to achieve compliance with MSRB rules, which NASD Rule 3010(a) does not explicitly reference.[4]

(i) *Proposed FINRA Rule 3110(a)(1): Establishment and Maintenance of Written Procedures*

Proposed FINRA Rule 3110(a)(1), which is identical to NASD Rule 3010(a)(1), would require a member's supervisory system to include the establishment and maintenance of written procedures.

(ii) *Proposed FINRA Rule 3110(a)(2): Designated Principal*

Proposed FINRA Rule 3110(a)(2), which is identical to NASD Rule 3010(a)(2), would require a member's supervisory system to include the designation of an appropriately registered principal(s) with authority to carry out the supervisory responsibilities for each type of business in which the member engages for which registration as a broker-dealer is required.

(iii) *Proposed FINRA Rule 3110(a)(3) and Proposed Supplementary Material .01–.02*

Proposed FINRA Rule 3110(a)(3) would require the registration and designation as a branch office or an office of supervisory jurisdiction ("OSJ") of each location, including the main office, as those terms are defined in the proposed rule. Proposed FINRA Rule 3110(a)(3) is based on similar provisions in NASD Rule 3010(a)(3). In addition, the proposed rule provision and proposed Supplementary Material .01 (Registration of Main Office) incorporate the requirement in NASD IM–1000–4 (Branch Offices and Offices of Supervisory Jurisdiction) that all branch offices and OSJs must be registered as either a branch office or OSJ, respectively. FINRA is deleting NASD IM–1000–4 as part of this proposed rule change.

[3] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from the NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[4] In this regard, SEC staff has confirmed FINRA staff's view that a violation of the MSRB rules also would be a violation of the federal securities laws, as it would constitute a violation of SEA Section 15B(c)(1). *See Letter from James L. Eastman, Chief Counsel and Associate Director, Division of Trading and Markets, SEC, to Patrice M. Gliniecki, Senior Vice President and Deputy General Counsel, FINRA (March 17, 2009).*

In addition, the proposed rule change moves, with no substantive changes, the provisions in NASD Rule 3010(a)(3) setting forth factors a member should consider in designating additional locations as OSJs into proposed Supplementary Material .02 (Designation of Additional OSJs).

(iv) *Proposed FINRA Rule 3110(a)(4) and Proposed Supplementary Material .03–.04*

Proposed FINRA Rule 3110(a)(4) would require a member to designate one or more appropriately registered principals in each OSJ and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the member. This proposed provision would replace the nearly identical provision in NASD Rule 3010(a)(4) with a minor editorial change to delete the phrase "including the main office," from the rule text.

Supplementary Material .03 (One-Person OSJs) codifies existing guidance on the supervision of one-person OSJs. Specifically, the proposed supplementary material would clarify the core concept that the registered principal designated to carry out supervisory responsibilities assigned to such an OSJ ("on-site principal") cannot supervise his or her own activities if such principal is authorized to engage in business activities other than the supervision of associated persons or other offices as enumerated in proposed FINRA Rule 3110(e)(1)(D) through (G). Proposed Supplementary Material .03 also would provide that, in such instances, the on-site principal must be under the effective supervision and control of another appropriately registered principal ("senior principal"). The senior principal is responsible for supervising the activities of the on-site principal at such office and must conduct on-site supervision of such OSJ on a regular periodic schedule determined by the member. The proposed supplementary material would require a member to consider, among other factors, the nature and complexity of the securities activities for which the location is responsible, the nature and extent of contact with customers, and the disciplinary history of the on-site principal in determining this schedule.

Proposed Supplementary Material .04 (Supervision of Multiple OSJs by a Single Principal) would clarify the requirement in proposed Rule 3110(a)(4) to designate an on-site principal in each OSJ with authority to carry out the supervisory responsibilities assigned to that office. Such on-site principal must have a physical presence, on a regular and routine basis, at the OSJ for which the principal has supervisory responsibilities. The proposed supplementary material would establish a general presumption that a principal will not be assigned to supervise more than one OSJ. If a member determines it is necessary to designate and assign a single appropriately registered principal to supervise more than one OSJ, the proposed supplementary material would require the member to take into consideration, among others, the following factors:

- Whether the principal is qualified by virtue of experience and training to supervise the activities and associated persons in each location;
- Whether the principal has the capacity and time to supervise the activities and associated persons in each location;
- Whether the principal is a producing registered representative;
- Whether the OSJ locations are in sufficiently close proximity to ensure that the principal is physically present at each location on a regular and routine basis; and
- The nature of activities at each location, including size and number of associated persons, scope of business activities, nature and complexity of products and services offered, volume of business done, the disciplinary history of persons assigned to such locations, and any other indicators of irregularities or misconduct.

Where a member determines to assign one principal to supervise more than one OSJ, the member must document the factors it used to determine why the member considers such supervisory structure to be reasonable. There is a further general presumption that a determination by a member to assign one principal to supervise more than two OSJs is unreasonable. If a member determines to designate and assign one principal to supervise more than two OSJs, the proposed supplementary material would provide that such determination will be subject to greater scrutiny, and the member will have a greater burden to evidence the reasonableness of such structure.

(v) *Proposed FINRA Rule 3110(a)(5) through (7) and Proposed Supplementary Material .05*

Proposed FINRA Rule 3110(a)(5) would require that each registered person be assigned to an appropriately registered representative(s) or principal(s) who is responsible for supervising that person's activities. Proposed FINRA Rule 3110(a)(6) would require a member to use reasonable efforts to determine that all supervisory personnel have the necessary experience or training to be qualified to carry out their assigned responsibilities. Proposed FINRA Rule 3110(a)(7) would require each registered representative and registered principal to participate, at least once each year, in an interview or meeting at which compliance matters relevant to the particular representative or principal are discussed. These proposed provisions would replace the nearly identical provisions in NASD Rule 3010(a)(5) through (7) with only minor editorial changes.

Proposed Supplementary Material .05 (Annual Compliance Meeting) would codify existing guidance that a member is not required to conduct in-person meetings with each registered person or groups of registered persons to comply with the annual compliance meetings required by proposed FINRA Rule 3110(a)(7).[5] However, a member that chooses to conduct meetings using other methods (e.g., on-demand webcast or course, video conference, interactive classroom setting, telephone, or other electronic means) must ensure, at a minimum, that each registered person attends the entire meeting (e.g., an on-demand annual compliance webcast would require each registered person to use a unique user ID and password to gain access and use a technology platform to track the time spent on the webcast, provide click-as-you-go confirmation, and have an attestation of completion at the end of a webcast) and is able to ask questions regarding the presentation and receive answers in a timely fashion (e.g., an on-demand annual compliance webcast that allows registered persons to ask questions via an email to a presenter or a centralized address or via a telephone hotline and receive timely responses directly or view such responses on the member's intranet site).

(B) Proposed FINRA Rule 3110(b) (Written Procedures)

FINRA proposes to consolidate various provisions and rules that currently require written procedures into proposed FINRA Rule 3110(b),

[5] *See Notices to Members* 99–45 (June 1999) and 05–44 (June 2005); *see also* Letter from Afshin Atabaki, FINRA, to Evan Charkes, Citigroup Global Markets, Inc., dated November 30, 2006 (members may use on-demand webcast technology to satisfy the annual compliance meeting requirement, subject to specified safeguards and conditions); letter from Afshin Atabaki, FINRA, to S. Kendrick Dunn, Pacific Select Distributors, Inc., dated February 5, 2013 (members may use on-demand course without voice narration to satisfy annual compliance meeting requirement, subject to specified safeguards and conditions).

including provisions from NASD Rule 3010(d) relating to the supervision and review of registered representatives' transactions and correspondence and Incorporated NYSE Rule 401A (Customer Complaints) relating to the review of customer complaints. In addition, proposed supplementary material, which is discussed in detail below, would codify and expand guidance in these areas.

(i) Proposed FINRA Rule 3110(b)(1) (General Requirements)

Proposed FINRA Rule 3110(b)(1) would require a member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, FINRA rules, and MSRB rules. The proposed rule provision is substantially similar to NASD Rule 3010(b)(1) except for two revisions that mirror changes in proposed FINRA Rule 3110(a). First, proposed FINRA Rule 3110(b)(1) would refer only to associated persons instead of the current reference in NASD Rule 3010(b)(1) to "registered representatives, registered principals, and other associated persons." Second, FINRA Rule 3110(b)(1) would require a member's written supervisory procedures to be reasonably designed to achieve compliance with MSRB rules, which NASD Rule 3010(b)(1) does not explicitly reference.[6]

(ii) Proposed FINRA Rule 3110(b)(2) (Review of Member's Investment Banking and Securities Business) and Proposed Supplementary Material .06

FINRA is retaining the provision in NASD Rule 3010(d)(1) requiring principal review, evidenced in writing, of all transactions, but is relocating the provision to proposed FINRA Rule 3110(b)(2). FINRA is also proposing to amend the provision to clarify that such review would include all transactions relating to the member's investment banking or securities business. Proposed Supplementary Material .06 (Risk-based Review of Member's Investment Banking and Securities Business) would permit a member to use a risk-based system to review these transactions.

(iii) Proposed FINRA Rule 3110(b)(3)

FINRA is preserving this provision for future rulemaking.[7]

(iv) Proposed FINRA Rule 3110(b)(4) (Review of Correspondence and Internal Communications) and Proposed Supplementary Material .07–.10

Proposed FINRA Rule 3110(b)(4) would generally incorporate the substance of NASD Rule 3010(d)(2) (Review of Correspondence) requiring members to have supervisory procedures for the review of correspondence. In addition, the proposed provision and proposed related supplementary material would incorporate existing guidance regarding the supervision of electronic communications in *Regulatory Notice* 07–59 (December 2007).

Specifically, proposed FINRA Rule 3110(b)(4) would require that a member have supervisory procedures for the review of the member's incoming and outgoing written (including electronic) correspondence with the public and internal communications that relate to its investment banking or securities business. In particular, the proposed rule would require a member to have supervisory procedures requiring the member's review of incoming and outgoing written (including electronic) correspondence with the public to properly identify and handle in accordance with firm procedures, customer complaints, instructions, funds and securities, and communications that are of a subject matter that require review under FINRA and MSRB rules and federal securities laws. In addition, proposed FINRA Rule 3110(b)(4) would require a member to have supervisory procedures to review internal communications to properly identify communications that are of a subject matter that require review under FINRA and MSRB rules and federal securities laws. Those communications include (without limitation):

- Communications between non-research and research departments concerning a research report's contents (NASD Rule 2711(b)(3) and Incorporated NYSE Rule 472(b)(3));
- Certain communications with the public that require a principal's pre-approval (FINRA Rule 2210);[8]
- The identification and reporting to FINRA of customer complaints (FINRA Rule 4530);[9] and
- The identification and prior written approval of changes in account name(s) (including related accounts) or designation(s) (including error accounts) regarding customer orders (FINRA Rule 4515).

Proposed Supplementary Material .07 (Risk-based Review of Correspondence and Internal Communications), however, would require a member, by employing risk-based principles, to decide the extent to which additional policies and procedures for the review of incoming and outgoing written (including electronic) correspondence with the public that fall outside of the subject matters listed in proposed FINRA Rule 3110(b)(4) are necessary for its business and structure. If a member's procedures do not require that all correspondence be reviewed before use or distribution, the procedures must provide for:

- The education and training of associated persons regarding the firm's procedures governing correspondence;
- The documentation of such education and training; and
- Surveillance and follow-up to ensure that such procedures are implemented and followed.

In addition, proposed Supplementary Material .07 would require a member, by employing risk-based principles, to decide the extent to which additional policies and procedures for the review of internal communications that are not of a subject matter that require review under FINRA and MSRB rules and federal securities laws are necessary for its business and structure.

Proposed FINRA Rule 3110(b)(4) also would require that a registered principal review correspondence with the public and internal communications and evidence those reviews in writing (either electronically or on paper). Proposed Supplementary Material .09 (Delegation of Correspondence and Internal Communication Review Functions) would allow a supervisor/principal to delegate review functions to an unregistered person; however, the supervisor/principal remains ultimately responsible for the performance of all necessary supervisory reviews.

Proposed Supplementary Material .08 (Evidence of Review of Correspondence and Internal Communications) would codify existing FINRA guidance that merely opening a communication is not

[6] *See supra* note 3.

[7] As noted in *Regulatory Notice* 08–24 (May 2008), FINRA proposed to delete NASD Rule 3040 (Private Securities Transactions of an Associated Person) and replace it with FINRA Rule 3110(b)(3) (Supervision of Outside Securities Activities) and proposed Supplementary Material .07 (Reliance on Bank or Affiliated Entity to Supervise Dual Employees). FINRA, however, has determined to address NASD Rule 3040 as a separate proposal.

[8] *See* Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of SR–FINRA–2011–035); *see also Regulatory Notice* 12–29 (June 2012) (SEC Approves New Rules Governing Communications With the Public—Effective Date: February 4, 2013).

[9] With respect to customer complaints, as detailed further below, proposed FINRA Rule 3110(b)(5) also would affirmatively require members to capture, acknowledge, and respond to all written (including electronic) customer complaints.

sufficient review.[10] Instead, a member must identify what communication was reviewed, the identity of the reviewer, the date of review, and the actions taken by the member as a result of any significant regulatory issues identified during the review.

Finally, proposed Supplementary Material .10 (Retention of Correspondence and Internal Communications), which is largely based on the requirements in NASD Rule 3010(d)(3) (Retention of Correspondence), would require a member to retain its internal communications and correspondence of associated persons relating to the member's investment banking or securities business in accordance with SEA Rule 17a–4(b) [11] and make those records available to FINRA upon request.

(v) Proposed FINRA Rule 3110(b)(5) (Review of Customer Complaints)

Incorporated NYSE Rule 401A (Customer Complaints) requires firms to acknowledge and respond to all customer complaints subject to the reporting requirements of Incorporated NYSE Rule 351(d) (Reporting Requirements). Previously, this meant that firms had to acknowledge and respond to both written and oral customer complaints. However, as part of the effort to harmonize the NASD and NYSE rules in the interim period before completion of the Consolidated FINRA Rulebook, Incorporated NYSE Rule 351(d) was amended to limit the definition of "customer complaint" to include only written complaints, thereby making the definition substantially similar to that in NASD Rule 3070(c) (Reporting Requirements).[12]

Proposed FINRA Rule 3110(b)(5), which would require a member's supervisory procedures to include procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints, essentially incorporates the customer complaint requirement in Incorporated NYSE Rule 401A, including the limitation on including only written (including electronic) customer complaints. FINRA believes that oral complaints are difficult to capture and assess, and they raise competing views as to the substance of the complaint being alleged. Consequently, oral complaints do not lend themselves as effectively to a review program as written complaints, which are more readily documented and retained. However, FINRA reminds members that the failure to address any customer complaint, written or oral, may be a violation of FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade).

(vi) Proposed FINRA Rule 3110(b)(6) (Documentation and Supervision of Supervisory Personnel) and Proposed Supplementary Material .11

Proposed FINRA Rule 3110(b)(6) is based largely on existing provisions in NASD Rule 3010(b)(3) requiring a member's supervisory procedures to set forth the member's supervisory system and to include a record of the member's supervisory personnel with such details as titles, registration status, locations, and responsibilities. The proposed rule also would include a new provision, proposed FINRA Rule 3110(b)(6)(C), that would address potential abuses in connection with the supervision of supervisors. This provision would replace NASD Rule 3012(a)(2) concerning the supervision of a producing manager's customer account activity and the requirement to impose heightened supervision when any producing manager's revenues rise above a specific threshold.

Specifically, the proposed provision would require members to have procedures prohibiting associated persons who perform a supervisory function from:

- supervising their own activities; and
- reporting to, or having their compensation or continued employment determined by, someone they are supervising.

The proposal, however, would create an exception for a member that determines, with respect to any of its supervisory personnel, that compliance with either of these conditions is not possible because of the member's size or a supervisory personnel's position within the firm. A member relying on this exception must document the factors the member used to reach such determination and how the supervisory arrangement with respect to such supervisory personnel otherwise comports with proposed FINRA Rule 3110(a). Proposed Supplementary Material .11 (Supervision of Supervisory Personnel) would explain that a member generally will need to rely on this exception only because it is a sole proprietor in a single-person firm or where a supervisor holds a very senior executive position within the firm. Members relying on this exception would not be required to notify FINRA of their reliance.

Proposed FINRA Rule 3110(b)(6)(D) would require a member to have procedures to prevent the standards of supervision required pursuant to proposed FINRA Rule 3110(a) from being reduced in any manner due to any conflicts of interest that may be present with respect to the associated person being supervised, such as the person's position, the amount of revenue such person generates for the firm, or any compensation that the associated person conducting the supervision may derive from the associated person being supervised. There is no exception from this provision.

(vii) Proposed FINRA Rule 3110(b)(7) (Maintenance of Written Supervisory Procedures) and Proposed Supplementary Material .12

Proposed FINRA Rule 3110(b)(7), which would replace similar requirements in NASD Rule 3010(b)(4), would require a member to keep and maintain a copy of the member's written supervisory procedures, or the relevant portions thereof, at each OSJ and at each location where supervisory activities are conducted on behalf of the member. The member must also promptly amend its written supervisory procedures to reflect changes in applicable securities laws or regulations, including FINRA and MSRB rules, and as changes occur in its supervisory system. In addition, each member must promptly communicate its written supervisory procedures and amendments to all associated persons to whom such written supervisory procedures and amendments are relevant based on their activities and responsibilities.

Proposed Supplementary Material .12 (Use of Electronic Media to Communicate Written Supervisory Procedures) would permit a member to satisfy its obligation to communicate its written supervisory procedures, and any amendments thereto, using electronic media, provided that: (1) The written supervisory procedures have been promptly communicated to, and are readily accessible by, all associated persons to whom such supervisory procedures apply based on their activities and responsibilities through, for example, the member's intranet system; (2) all amendments to the written supervisory procedures are promptly posted to the member's electronic media; (3) associated persons are notified that amendments relevant to their activities and responsibilities have been made to the written supervisory

[10] *See Regulatory Notice* 07–59 (December 2007).

[11] 17 CFR 240.17a–4(b).

[12] FINRA adopted FINRA Rule 4530 (Reporting Requirements) to replace NASD Rule 3070 and comparable provisions in Incorporated NYSE Rule 351. *See* Securities Exchange Act Release No. 63260 (November 5, 2010), 75 FR 69508 (November 12, 2010) (Notice of Filing of Amendments No. 1 and 2 and Order Granting Accelerated Approval of File No. SR–FINRA–2010–034). FINRA Rule 4530 became effective on July 1, 2011. *See Regulatory Notice* 11–06 (February 2011).

procedures; (4) the member has reasonable procedures to monitor and maintain the security of the material posted to ensure that it cannot be altered by unauthorized persons; and (5) the member retains current and prior versions of its written supervisory procedures in compliance with the applicable record retention requirements of SEA Rule 17a–4(e)(7).[13]

(C) Proposed FINRA Rule 3110(c) (Internal Inspections) and Proposed Supplementary Material .13–.15

Proposed FINRA Rule 3110(c)(1), based largely on NASD Rule 3010(c)(1), would retain the existing requirements for each member to review, at least annually, the businesses in which it engages and inspect each office on a specified schedule. That inspection schedule would require that OSJs and supervisory branch offices be inspected at least annually, non-supervisory branch offices be inspected at least every three years, and non-branch locations be inspected on a regular periodic schedule. The proposed rule provision also would clarify that the term "annually," as used in proposed FINRA Rule 3110(c), means on a calendar-year basis.

Proposed Supplementary Material .14 (General Presumption of Three-Year Limit for Periodic Inspection Schedules) would provide a general presumption that a non-branch location will be inspected at least every three years, even in the absence of any indicators of irregularities or misconduct (i.e., "red flags"). If a member establishes a periodic inspection schedule longer than three years, the member must document in its written supervisory and inspection procedures the factors used in determining that a longer periodic inspection cycle is appropriate. As with NASD Rule 3010(c), proposed FINRA Rule 3110(c) would require a member to retain a written record of each review and inspection, reduce a location's inspection to a written report, and keep each inspection report on file either for a minimum of three years or, if the location's inspection schedule is longer than three years, until the next inspection report has been written.

The proposal revises NASD Rule 3010(c)(3)'s provisions prohibiting certain persons from conducting office inspections to make the provisions less prescriptive. To that end, the proposed rule would eliminate the heightened office inspection requirements members must implement if the person conducting the office inspection either reports to the branch office manager's supervisor or works in an office supervised by the branch manager's supervisor, and the branch office manager generates 20% or more of the revenue of the business units supervised by the branch office manager's supervisor. The proposal would replace these requirements with provisions requiring a member to:

- prevent the inspection standards required pursuant to proposed FINRA Rule 3110(c)(1) from being reduced in any manner due to any conflicts of interest that may be present, including but not limited to, economic, commercial, or financial interests in the associated persons and businesses being inspected; and
- ensure that the person conducting an inspection pursuant to proposed FINRA Rule 3110(c)(1) is not an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to the location.

A member that determines it cannot comply with this last condition due to its size or business model must document in the inspection report both the factors the member used to make its determination and how the inspection otherwise comports with proposed FINRA Rule 3110(c)(1). Proposed Supplementary Material .15 (Exception to Persons Prohibited from Conducting Inspections) would provide that such a determination generally will arise only in instances where the member has only one office or the member has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices' branch office manager. The proposal also generally would retain as Supplementary Material .13 (Standards for Reasonable Review) the content of NASD IM–3010–1 (Standards for Reasonable Review) relating to standards for the reasonable review of offices.[14]

In addition, the proposal would relocate into proposed FINRA Rule 3110(c)(2) provisions in NASD Rule 3012 regarding the review and monitoring of specified activities, such as transmittals of funds and securities and customer changes of address and investment objectives. Specifically, proposed FINRA Rule 3110(c)(2)(A) would require a member to test and verify a location's procedures for: (1) Safeguarding of customer funds and securities; (2) maintaining books and records; (3) supervision of supervisory personnel; (4) transmittals of funds (e.g., wires or checks, etc.) or securities from customers to third party accounts, from customer accounts to outside entities (e.g., banks, investment companies, etc.), from customer accounts to locations other than a customer's primary residence (e.g., post office box, "in care of" accounts, alternate address, etc.), and between customers and registered representatives, including the hand-delivery of checks; and (5) changes of customer account information, including address and investment objective changes and validation of such changes. With respect to the transmittal of funds or securities from customers to third party accounts, the proposal would eliminate NASD Rule 3012's parenthetical text ("i.e., a transmittal that would result in a change in beneficial ownership)" to clarify that all transmittals to an account where a customer on the original account is not a named account holder are included.

Proposed FINRA Rule 3110(c)(2)(B) would require for transmittals of funds or securities a means or method of customer confirmation, notification, or follow-up that can be documented but would make clear that members may use risk-based methods to determine the authenticity of the transmittal instructions. Proposed FINRA Rule 3110(c)(2)(C) also would require for changes of customer account information a means or method of customer confirmation, notification or follow-up that can be documented and that complies with SEA Rules 17a–3(a)(17)(i)(B)(2)[15] and 17a–3(a)(17)(i)(B)(3).[16] Finally, proposed FINRA Rule 3110(c)(2)(D) would make clear that if a location being inspected does not engage in all of the activities listed above, the member must identify those activities in the location's written inspection report and document in the report that supervisory policies and procedures must be in place at that location before the location can engage in them.

(D) Proposed FINRA Rule 3110(d) (Transaction Review and Investigation)

Section 15(g) of the Act,[17] adopted as part of the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"),[18] requires every registered broker or dealer to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the broker or

[13] 17 CFR 240.17a–4(e)(7).

[14] *See also* Incorporated NYSE Rule 342.10 (Definition of Branch Office).

[15] 17 CFR 240.17a–3(a)(17)(i)(B)(2) (changes in the name or address of customer or owner).

[16] 17 CFR 240.17a–3(a)(17)(i)(B)(3) (changes in an account's investment objectives).

[17] 15 U.S.C. 78*o*(g).

[18] *See* Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100–704, 102 Stat. 4677.

dealer or any associated person of the broker or dealer. Incorporated NYSE Rule 342.21 sets forth specific supervisory procedures for compliance with ITSFEA by requiring firms to review trades in NYSE-listed securities and related financial instruments that are effected for the member's account or for the accounts of the member's employees and family members. Incorporated NYSE Rule 342.21 also requires members to promptly conduct an internal investigation into any trade the firm identifies that may have violated insider trading laws or rules.

FINRA is proposing FINRA Rule 3110(d) to incorporate into the Consolidated FINRA Rulebook the provisions of Incorporated NYSE Rule 342.21, with some modifications, and extend the requirement beyond NYSE-listed securities and related financial instruments to cover all securities. Specifically, proposed FINRA Rule 3110(d)(1) would require a member to have supervisory procedures for the review of securities transactions that are effected for the account(s) of the member or associated persons of the member as well as any other "covered account" [19] to identify trades that may violate the provisions of the Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices. The proposed rule change also would require members to promptly conduct an internal investigation into any identified trades to determine whether a violation of those laws or rules has occurred.

Proposed FINRA Rule 3110(d)(2) would require any member that engages in "investment banking services," [20] to provide reports to FINRA regarding such investigations. These members would be required to make written reports to FINRA within ten business days of the end of each calendar quarter describing each internal investigation initiated in the previous calendar quarter, including the member's identity, the commencement date of each internal investigation, the status of each open internal investigation, the resolution of any internal investigation reached during the previous calendar quarter, and with respect to each internal investigation, the identity of the security, trades, accounts, member's associated persons or family members of such associated person holding a covered account, under review, and a copy of the member's policies and procedures required by proposed FINRA Rule 3110(d)(1)(A). If a member subject to this requirement did not have an open internal investigation or either initiate or complete an internal investigation during a particular calendar quarter, the member would not be required to submit a report for that quarter.

In addition, the proposed rule would require a written report within five business days of completion of such internal investigation in which it was determined that a violation of the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices had occurred. The report must detail the completion of the investigation, including the results of the investigation, any internal disciplinary action taken, and any referral of the matter to FINRA, another self-regulatory organization ("SRO"), the SEC, or any other federal, state, or international regulatory authority.

(E) Proposed FINRA Rule 3110(e) (Definitions)

Proposed FINRA Rule 3110(e) would retain the definitions of "branch office," "office of supervisory jurisdiction," and "business day" in NASD Rule 3010(g). The branch office definition already has been harmonized with the definition of "branch office" in Incorporated NYSE Rule 342.10.

(2) Proposed FINRA Rule 3120 (Supervisory Control System)

FINRA is proposing to replace NASD Rule 3012 (Supervisory Control System) with FINRA Rule 3120. Proposed FINRA Rule 3120(a) would retain NASD Rule 3012(a)(1)'s testing and verification requirements for the member's supervisory procedures, including the requirement to prepare and submit to the member's senior management a report at least annually summarizing the test results and any necessary amendments to those procedures.

Proposed FINRA Rule 3120(b) would require a member that reported $200 million or more in gross revenue (total revenue less, if applicable, commodities revenue) on its FOCUS reports in the prior calendar year to include in the report it submits to senior management:

- a tabulation of the reports pertaining to customer complaints and internal investigations made to FINRA during the preceding year; and
- a discussion of the preceding year's compliance efforts, including procedures and educational programs, in each of the following areas:
  - trading and market activities;
  - investment banking activities;
  - antifraud and sales practices;
  - finance and operations;
  - supervision; and
  - anti-money laundering.

The categories listed above are incorporated from the annual report content requirements of Incorporated NYSE Rule 342.30 (Annual Report and Certification).

(3) Proposed FINRA Rule 3150 (Holding of Customer Mail)

The proposed rule change would replace NASD Rule 3110(i) (Holding of Customer Mail) with proposed FINRA Rule 3150, a more general rule that would eliminate the strict time limits in NASD Rule 3110(i) and generally would allow a member to hold a customer's mail for a specific time period in accordance with the customer's written instructions if the member meets specified conditions. Specifically, proposed FINRA Rule 3150(a) would provide that a member may hold mail for a customer who will not be receiving mail at his or her usual address, provided that the member:

- receives written instructions from the customer that include the time period during which the member is requested to hold the customer's mail. If the time period included in the customer's instructions is longer than three consecutive months (including any aggregation of time periods from prior requests), the customer's instructions must include an acceptable reason for the request (e.g., safety or security concerns). Convenience is not an acceptable reason for holding mail longer than three months;
- informs the customer in writing of any alternate methods, such as email or access through the member's Web site, that the customer may use to receive or monitor account activity and information and obtains the customer's confirmation of the receipt of such information; and

[19] Proposed FINRA Rule 3110(d)(3)(A) defines the term "covered account" to include (i) any account held by the spouse, domestic partner, child, parent, sibling, son-in-law, daughter-in-law, father-in-law, or mother-in-law of a person associated with the member where such account is introduced or carried by the member; (ii) any account introduced or carried by the member in which a person associated with the member has a beneficial interest; (iii) any account introduced or carried by the member over which a person associated with the member has the authority to make investment decisions; and (iv) any account of a person associated with a member that is disclosed to the member pursuant to NASD Rule 3050 or NYSE Rule 407, as applicable.

[20] Proposed FINRA Rule 3110(d)(3)(B) defines the term "investment banking services" to include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer, or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer. This proposed definition is the same definition as in proposed FINRA Rule 2240(a)(4) (Research Analysts and Research Reports). *See Regulatory Notice* 08–55 (October 2008).

• verifies at reasonable intervals that the instructions still apply.

In addition, proposed FINRA Rule 3150(b) would require that the member be able to communicate, as necessary, with the customer in a timely manner during the time the member is holding the customer's mail to provide important account information (e.g., privacy notices, the SIPC information disclosures required by FINRA Rule 2266 (SIPC Information)).

Finally, proposed FINRA Rule 3150(c) would require a member holding a customer's mail to take actions reasonably designed to ensure that the customer's mail is not tampered with, held without the customer's consent, or used by an associated person of the member in any manner that would violate FINRA rules, MSRB rules, or the federal securities laws.

(4) Proposed FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms)

FINRA proposes to reconstitute NASD Rule 3010(b)(2) (Tape Recording of Conversations) without any substantive changes as new FINRA Rule 3170. The only proposed changes to the rule text are minor editorial changes to assist with readability, changes to the definition of disciplinary history to reflect the adoption of the enumerated NASD rules as FINRA rules, and a definition clarifying that the term "tape recording" would include without limitation, any electronic or digital recording that meets the requirements of proposed FINRA Rule 3170.

(5) Proposal to Eliminate NYSE Rules

As stated previously, the proposed rule change would delete corresponding provisions in the Incorporated NYSE Rules and Interpretations that are, in main part, either duplicative of, or do not align with, the proposed supervision requirements discussed above. Specifically, the proposed deleted rule provisions are:

• Incorporated NYSE Rule 342;

• Incorporated NYSE Rule Interpretations 342(a)(b)/01 through 342(a)(b)/03, 342(b)/01 through 342(b)/02, 342(c)/02, 342(e)/01, 342.10/01, 342.13/01, 342.15/01 through 342.15/05, 342.16/01 through 342.16/03;

• Incorporated NYSE Rules 343, 343.10 and NYSE Rule Interpretation 343(a)/01;

• Incorporated NYSE Rule 351(e) and NYSE Rule Interpretation 351(e)/01;

• Incorporated NYSE Rule 354; and

• Incorporated NYSE Rule 401.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 365 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change would clarify and streamline the supervision and supervisory rules for adoption as FINRA Rules in the Consolidated FINRA Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change's risk-based approach for specified aspects of a member's supervisory procedures is intended to allow firms the flexibility to establish their supervisory programs in a manner that reflects their business models, and based on those models, focus on areas where heightened concerns may be warranted. For example, proposed FINRA Rule 3110's provisions requiring supervisory procedures for the risk-based review of all transactions relating to a member's investment banking or securities business and review of a member's correspondence and internal communications that are not of a subject matter that require review under FINRA and MSRB rules would alleviate compliance costs by providing members with greater flexibility to tailor their supervisory and supervisory control procedures to reflect their business, size, and organizational structure.

In addition, FINRA believes that the proposed rule change is tailored to minimize the membership's burden and cost of complying with the consolidated supervision rules by providing exceptions, based on a member's size, resources, and business model, to specified supervisory and inspection requirements in proposed FINRA Rule 3110. Specifically, the proposed rule change provides an exception from proposed FINRA Rule 3110's provisions prohibiting a member's supervisory personnel from supervising their own activities and from reporting to, or having their compensation or continued employment determined by, a person or persons they are supervising, where a member determines that compliance with either of these conditions is not possible because of the member's size or supervisory personnel's position within the firm. The proposed rule change also provides an exception from proposed FINRA Rule 3110's requirement that the person conducting a location inspection not be an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to that location, where the member determines that compliance with this requirement is not possible either because of the member's size or business model. These exceptions are designed in particular to provide relief to smaller-sized members, such as sole proprietors or members with only one office, as well as members with a business model where small or single person offices report directly to an OSJ manager who is also considered the office's branch office manager. At the same time, the proposed rule change is designed to protect against concerns that a member relying on the exceptions would be unable to comply with its supervisory and inspection obligations by requiring the member to document both the factors the member used to reach the determination that it needs to rely on the exceptions and how the member's reliance on the exception otherwise comports with the applicable standards set forth in proposed FINRA Rule 3110.

The proposed rule change also seeks to mitigate compliance costs and burdens with respect to proposed FINRA Rule 3120's annual reporting requirements by requiring that only members reporting $200 million or more in gross revenues in the preceding year (increased from the $150 million threshold originally proposed in the Initial Filing)[22] include in their annual reports supplemental information from Incorporated NYSE Rule 342.30's annual report content requirements. FINRA believes that the revised threshold strikes the appropriate balance as it encompasses larger dual member firms, members engaged in significant underwriting activities (including variable annuity principal underwriting and fund distributions) and substantial trading activities or market making business, and members with extensive sales platforms—approximately 160 member firms in total. The additional content requirements applicable to such firms

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] *See infra* note 22.

would provide a valuable resource in the context of understanding and examining those firms and their activities, which can generally be more complex or sizeable than smaller firms' activities. FINRA also considered that most members meeting the proposed threshold currently are subject to Incorporated NYSE Rule 342.30's reporting requirement. Further, the metric is easily determined by reference to the member's FOCUS reports in the calendar year prior to the annual report.

In addition, FINRA has modified proposed FINRA Rule 3110(d)'s reporting obligations for internal investigation reports to FINRA regarding suspected ITSFEA violations in response to commenters' concerns regarding potential burdens and compliance costs. The modifications eliminate the requirement to file with FINRA an initial report of an internal investigation within ten business days of its commencement and replace it with a quarterly reporting requirement. In addition, FINRA has replaced the proposed requirement to report the completion of each internal investigation within five business days of its completion with a more focused requirement that is limited to investigations that resulted in a finding of violation.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA published the proposed consolidated FINRA supervision rules in *Regulatory Notice* 08–24 (May 2008) requesting comment from interested parties. FINRA received 47 comment letters in response to *Regulatory Notice* 08–24. On June 10, 2011, FINRA filed with the SEC SR–FINRA–2011–028 (the "Initial Filing"), a proposed rule change to adopt the consolidated FINRA supervision rules, which addressed the comments received in response to *Regulatory Notice* 08–24.[23]

On June 29, 2011, the Initial Filing was published for comment in the **Federal Register**,[24] and the SEC received 12 comment letters in response to the proposal.[25] FINRA withdrew the Initial Filing on September 27, 2011 prior to filing a response to comments.[26] Accordingly, the comments to the Initial Filing and FINRA's responses are discussed below.

(a) General Comments

Several commenters to the Initial Filing expressed overall support for the proposed rule change, as well as expressing support for specific aspects of the proposal, such as the principles-based requirements for supervising supervisory personnel and codification of existing guidance regarding supervision of electronic communications and the use of electronic media to conduct required annual compliance meetings.[27] However, one commenter opposed the flexibility within the proposed rules, especially the proposed risk-based or principles-based review standards for certain obligations, such as the approval of securities transactions and the review of certain correspondence, stating that such flexibility would result in reduced or diminished supervisory requirements that would not achieve the purpose of protecting the investing public.[28]

In response, FINRA notes that the proposed rules' risk-based approach for specified aspects of a member's supervisory procedures is intended to increase, not diminish, investor protection by allowing firms the flexibility to establish their supervisory programs in a manner that reflects their business models, and based on those models, focus on areas where heightened concern may be warranted. In addition, as FINRA noted in the Initial Filing, the proposed rules further protect investors by retaining certain specific prescriptive requirements of NASD Rules 3010 and 3012, such as mandatory inspection cycles, prohibitions on who can conduct location inspections, and procedures for the monitoring of certain enumerated activities, while providing additional prescriptive requirements where necessary, including special supervision for supervisory personnel rather than just the existing special supervision for producing managers, specific procedures to detect and investigate potential insider trading violations, and additional content requirements for specified firms' annual reports.

(b) Comments on Proposed FINRA Rule 3110(a)

(1) Suggested Amendment to FINRA Rule 3110(a)

Proposed FINRA Rule 3110(a) (Supervisory System) would require a member to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA and MSRB rules. One commenter to the Initial Filing suggested that FINRA amend proposed FINRA Rule 3110(a) to require a supervisory system for the "securities activities" of a member's associated persons, as FINRA's rulemaking and examination authority does not extend to non-securities activities.[29] The commenter further contended that the suggested amendment would make the provision consistent with proposed FINRA Rule 3110(a)(2), which would require a member to designate an appropriately registered principal to be responsible for each type of a firm's business for which registration as a broker-dealer is required. As noted above and in the Initial Filing, proposed FINRA Rule 3110(a) is transferring existing rule text in NASD Rule 3010(a) with only minor changes (i.e., including an express reference to the MSRB rules, referring only to associated persons instead of the current reference in NASD Rule 3010(a) to each "registered representative, registered principal, and other associated person"). FINRA continues to believe that proposed FINRA Rule 3110(a) would set forth the appropriate standard for members' supervisory systems, i.e., that a member's supervisory system for the activities of its associated persons be

[23] *See* Securities Exchange Act Release No. 64736 (June 23, 2011), 76 FR 38245 (June 29, 2011) (Notice of Filing of File No. SR–FINRA–2011–028).

[24] *See supra* note 22.

[25] Letters from David T. Bellaire, Esq., General Counsel and Director of Government Affairs, Financial Services Institute, to Elizabeth M. Murphy, Secretary, SEC, dated July 14, 2011 and July 20, 2011 ("FSI"); letters from Clifford Kirsch and Eric A. Arnold, Sutherland Asbill and Brennan, LLP, on behalf of the Committee of Annuity Insurers, to Elizabeth M. Murphy, Secretary, SEC, dated July 12, 2011, July 20, 2011, and August 4, 2011 ("CAI"); letter from Stephanie L. Brown, Managing Director and General Counsel, LPL Financial, to Elizabeth M. Murphy, Secretary, SEC, dated July 20, 2011 ("LPL"); letter from Scott Cook, Senior Vice President Compliance, Charles Schwab & Co., Inc., to Elizabeth M. Murphy, Secretary, SEC, dated July 20, 2011 ("Schwab"); letter from Joan Hinchman, Executive Director, President and CEO, National Society of Compliance Professionals Inc., to Elizabeth M. Murphy, Secretary, SEC, dated July 20, 2011 ("NSCP"); letter from Sarah McCafferty, Vice President and Chief Compliance Officer, T. Rowe Price Investment Services, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated July 20, 2011 ("T. Rowe Price"); letter from Peter J. Mougey, President, Public Investors Arbitration Bar Association, to Elizabeth M. Murphy, Secretary, SEC, dated July 20, 2011 ("PIABA"); letter from John Polanin and Claire Santaniello, Co-Chairs, Compliance and Regulatory Policy Committee 2011, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated July 20, 2011 ("SIFMA"); and letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, SEC, dated July 20, 2011 ("ICI"). The comment letters are available on the SEC's Web site.

[26] *See* Securities Exchange Act Release No. 65477 (October 4, 2011), 76 FR 62890 (October 11, 2011) (Notice of Withdrawal of File No. SR–FINRA–2011–028).

[27] SIFMA, FSI, CAI, Schwab, T. Rowe Price.

[28] PIABA.

[29] SIFMA.

reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA and MSRB rules. In this regard, FINRA notes that Exchange Act Section 15A(b)(6) mandates, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Proposed FINRA Rule 3110(a) also is consistent with proposed FINRA Rule 3110(b)(1), which would require a member to have supervisory procedures for the types of business in which it engages and the activities of its associated persons.[30] Accordingly, FINRA declines to make the suggested change.

(2) Outside Business Activities

Commenters requested that FINRA clarify that outside business activities of registered persons would be subject to FINRA Rule 3270 (Outside Business Activities of Registered Persons) rather than to proposed FINRA Rule 3110.[31] FINRA Rule 3270 generally pertains to outside business activities that are not within the scope of the registered representative's relationship with the member, and members must comply with the rule's requirements with respect to covered outside business activities. However, a member's supervisory system required by proposed FINRA Rule 3110 must include supervisory procedures that are reasonably designed to ensure compliance with FINRA Rule 3270, including the member's obligation pursuant to FINRA Rule 3270 to evaluate the proposed activity to determine whether the activity properly is characterized as an outside business activity. If a member's evaluation revealed that the proposed activity was within the scope of the representative's relationship with the member, then that activity would be subject to the requirements of proposed FINRA Rule 3110.[32]

(3) Deleted Supplementary Material

In the Initial Filing, proposed FINRA Rule 3110 included Supplementary Material .01 (Business Lines) providing that for a member's supervisory system required by proposed FINRA Rule 3110(a) to be reasonably designed to achieve compliance with FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), it must include supervision for all of the member's business lines irrespective of whether they require broker-dealer registration. A number of commenters provided comments on this proposed supplementary material. FINRA, however, has decided that the best course is to eliminate the proposed supplementary material from the proposed rule[33] and will continue to apply FINRA Rule 2010's standards to non-securities activities of members and their associated persons consistent with existing case law.[34]

(c) Comments on Proposed Supplementary Material .03

As stated above, proposed Supplementary Material .03 (One-Person OSJs) would codify existing guidance on the designation and supervision of one-person OSJs and would clarify that the registered principal assigned to such an OSJ ("on-site principal") cannot supervise his or her own sales activities and must be under the effective supervision and control of another appropriately registered principal ("senior principal"). The senior principal is responsible for supervising the activities of the on-site principal at such OSJ and must conduct on-site supervision of the OSJ on a regular periodic schedule to be determined by the member.

(1) Clarification of "Close Supervision and Control" Requirement

As proposed in the Initial Filing, Supplementary Material .03 would have required that the on-site principal be under the senior principal's "close supervision and control." Although one commenter to the Initial Filing supported proposed Supplementary Material .03,[35] another commenter requested that FINRA clarify the term "close supervision and control," stating that such term could be subject to a variety of interpretations.[36] In response, FINRA has amended "close supervision and control" to read "effective supervision and control," which should provide members with greater clarity. While the senior principal is not required to be physically present, full-time at the one-person OSJ, the member must be able to demonstrate "effective supervision and control" of the activities of the on-site principal at such OSJ.

(2) Consideration of Independent Broker-Dealer Business Model

Two commenters expressed concern that the proposed supplementary material does not take into account the business and supervisory structure of independent broker-dealer firms.[37] Specifically, one commenter supported the notion that self-supervision of one's own securities activities may be problematic and agreed that the designation of a senior principal to oversee the activity of the on-site principal may be necessary, but suggested that firms should have the flexibility to address self-supervision, and any conflicts such self-supervision may present, in their own manner.[38] The commenter also stated that the requirement of "periodic on-site supervision" by a senior principal may not create the appropriate efficiencies or enhance the overall supervisory structure as intended, and moreover ignores the long established business practices of conducting supervision remotely.

FINRA believes proposed Supplementary Material .03 strikes the correct balance between the flexibility firms need to establish a supervisory

[30] As noted above, proposed FINRA Rule 3110(b)(1) is substantially similar to NASD Rule 3010(b)(1)'s requirements to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons but includes minor language revisions to mirror changes in proposed FINRA Rule 3110(a). Specifically, proposed FINRA Rule 3110(b)(1) refers only to associated persons instead of the current reference in NASD Rule 3010(b)(1) to "registered representatives, registered principals, and other associated persons" and references the MSRB rules, which NASD Rule 3010(b)(1) does not explicitly reference.

[31] CAI, FSI.

[32] FINRA also considers this reply to be responsive to FSI's request that FINRA clarify whether proposed FINRA Rule 3110(b)(1), which would require a member to establish, maintain, and enforce written supervisory procedures for its supervisory system, would apply to outside business activities of registered persons.

[33] The deletion of this proposed supplementary material has resulted in a change in numbering of the remaining supplementary material to proposed FINRA Rule 3110. For ease of reference, the proposed rule change employs the new proposed numbers in all instances.

[34] See, e.g., *Ialeggia* v. *SEC*, No. 98–70854, 1999 U.S. App. LEXIS 10362, at *4–5 (9th Cir. May 20, 1999) ("NASD's disciplinary authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security" (citations omitted)); see *alsa Vail* v. *SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (registered representative, who was serving as treasurer for a political-affiliation club, violated just and equitable principles of trade when he misappropriated funds from the club); *In re John M.E. Saad*, Securities Exchange Act Release No. 62178, 2010 SEC LEXIS 1761, at *13–14 (May 26, 2010) (registered representative's falsification of receipts and submission on a fraudulent expense report violated just and equitable principles of trade), *remanded on other grounds*, No. 10–1195, 2013 U.S. App. LEXIS 11691 (D.C. Cir. June 11, 2013).

[35] PIABA.

[36] FSI.

[37] LPL, FSI.

[38] LPL.

structure best suited to their business models by allowing firms to establish one-person OSJs, with the need for effective supervision by clarifying that a reasonable supervisory structure cannot permit a principal to supervise his or her own sales activities due to the conflict of interest such situation presents.[39] Accordingly, FINRA believes that the requirement in proposed Supplementary Material .03 to have a senior principal regularly supervise the activities of an on-site producing principal is necessary to ensure that the on-site principal's activities are appropriately supervised.

The second commenter expressed concern that proposed Supplementary Material .03 would prohibit a "field OSJ" supervisory structure used by many independent broker-dealer firms. According to the commenter, a "field OSJ" supervisory structure uses field OSJ principals to supervise branch offices (e.g., approving client accounts, reviewing simple requests, and performing other low-level compliance functions). The "field OSJ" principals are then supervised by a firm's home office principals. Specifically, the commenter was concerned that a "field office" supervisory structure would be prohibited by proposed Supplementary Material .03 because such structure would allow a "field OSJ" principal to engage in certain basic compliance tasks related to his own business, and may not meet the previous "close supervision and control" standard.[40] The commenter requested more latitude to create effective compliance supervision systems and an explanation to justify the "disparate impact on IBD firms."

As noted above, proposed Supplementary Material .03 would require effective supervision and control of the sales activities of the on-site principal at the one-person OSJ by a senior principal. The proposed supplementary material does not prohibit the on-site principal at the one-person OSJ from supervising the activities of other associated persons or other offices (e.g., acting as a field principal for other associated persons or offices).

(3) Use of Technological Supervisory Tools

Both commenters also stated that the proposal "ignore[s] the nature of business in today's high technology environment" and that technology can effectively assist with supervision.[41] Moreover, one commenter stated that the proposal disregards the substantial costs that would be incurred by independent broker-dealers that have long-established business practices of conducting supervision remotely.[42] FINRA recognizes that technological supervisory tools may augment a senior principal's supervision. However, FINRA believes technology cannot replace the need for a senior principal who is responsible for supervising the sales activities of the on-site principal; conducting regular periodic on-site supervision of a producing principal is necessary to ensure effective supervision. In addition, FINRA notes that the proposed supplementary material does not specify an exact time frame for such on-site supervision. Rather, proposed Supplementary Material .03 would provide members with the flexibility to establish a regular periodic schedule for such on-site supervision by the senior principal based on a variety of factors, including the nature and complexity of the securities activities for which the one-person OSJ is responsible, the nature and extent of contact with customers, and the disciplinary history of the on-site principal.

(d) Comments on Proposed Supplementary Material .04

As detailed above, proposed Supplementary Material.04 (Supervision of Multiple OSJs by a Single Principal) would establish a general presumption that a principal will not be assigned to supervise more than one OSJ. The proposed supplementary material would set forth factors a member should consider if assigning a principal to two or more OSJs. There is a further general presumption that a principal supervising more than two OSJs is unreasonable and such determination will be subject to greater scrutiny, and the member will have a greater burden to evidence the reasonableness of such structure.

One commenter to the Initial Filing supported proposed Supplementary Material .04,[43] but three commenters raised concerns regarding aspects of the proposed supplementary material.[44] Specifically, one commenter objected that the proposed supplementary material was "unnecessarily restrictive" by depriving members of the flexibility to determine how to supervise their OSJs.[45] The same commenter also argued that the requirement of a "physical presence, on a regular and routine basis" was overly burdensome and unnecessary in light of effective electronic supervisory methods and suggested that FINRA either remove it or provide additional clarification on the phrase.[46] All three commenters objected to the proposed presumption that one principal supervising more than two OSJs is unreasonable,[47] with one commenter also objecting to the presumption that a principal will not be assigned to supervise more than one OSJ.[48] That particular commenter stated that such negative presumptions were inappropriate and could limit the development and design of more effective supervisory models.[49] Finally, one commenter stated that proposed Supplementary Material .04 interchangeably uses the terms "on-site

[39] See SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (reminding broker-dealers that small, remote offices require vigilant supervision and specifically noting that "[n]o individual can supervise themselves"); *NASD Regulatory & Compliance Alert*, Volume 11, Number 2 (June 1997) (cited by Staff Legal Bulletin No. 17 as support for statement that individuals cannot supervise themselves); *see also In re Stuart K. Patrick*, 51 S.E.C. 419, 422 (May 17, 1993) ("[s]upervision, by its very nature, cannot be performed by the employee himself") (SEC order sustaining application of the New York Stock Exchange's supervisory rule—also cited by Staff Legal Bulletin No. 17 as support for statement that individuals cannot supervise themselves).

[40] FSI.

[41] LPL, FSI.

[42] LPL.

[43] PIABA.

[44] Schwab, SIFMA, FSI. FSI also stated that proposed Supplementary Material .04 and proposed FINRA Rule 3110(a)(4) should clearly state that firms have discretion to create supervisory systems that are reasonably designed to achieve compliance with applicable FINRA rules and MSRB rules. FINRA notes that proposed FINRA Rule 3110(a) already provides the overarching standard that supervisory systems be reasonably designed to achieve compliance with the enumerated laws and rules.

[45] SIFMA. SIFMA also stated in footnote 14 of its comment letter, that it assumes "that proposed Supplementary Material [.04] is not intended to change existing requirements regarding product-specific principals that can be designated for a firm as a whole as opposed to being designated for a particular office, e.g. a member firm's municipal securities principal. *See* MSRB Rule G–27." It is difficult to interpret the specific nature of the commenter's concerns from this assertion. However, in the context of the commenter's municipal securities example, FINRA believes that proposed Supplementary Material .04 does not conflict with the specific requirements in MSRB Rule G–27 (Supervision) regarding the obligation of one or more appropriate principals designated under Rule G–27 to supervise the municipal securities activity of the dealer and the dealer's associated persons to ensure compliance with the rules of the MSRB.

[46] SIFMA raised a similar comment on *Regulatory Notice* 08–24 that the proposed supplementary material's requirement of a "physical presence" on a regular and routine basis was overly burdensome. As discussed in the Initial Filing, FINRA declined to make a change to the provision. *See* Exhibit 2b, page 240.

[47] Schwab, SIFMA, FSI.

[48] Schwab.

[49] Schwab.

supervisor" and "designated principal" and requested that FINRA clarify that the terms are not intended to encompass a member's "up-the-chain" reporting structure.[50]

In response, FINRA notes that the presumptions are consistent with the long-standing requirement (and cornerstone of a member's supervisory structure) in NASD Rule 3010(a)(4) for members to have an on-site principal in each OSJ location, which is being transferred virtually unchanged as proposed FINRA Rule 3110(a)(4). Thus, the physical presence, on a regular basis, of a principal already is required at each OSJ. FINRA believes the term "physical presence, on a regular basis," supports the general requirement in NASD Rule 3010(a)(4) to have a principal in each OSJ.

Proposed Supplementary Material .04 would provide members with greater flexibility than currently exists under NASD Rule 3010. In recognition of today's evolving business models, the proposed supplementary material would allow members the flexibility to designate and assign one principal to supervise more than one OSJ if the member determines that such supervision is reasonable and effective. However, FINRA expressly included the general presumption to make clear its view that effective supervision by one principal at more than two OSJs presents unique supervisory challenges and should be carefully considered and evidenced by a member. The proposed supplementary material would require a member that is assigning a principal to supervise more than one OSJ to consider, among other things, whether the OSJ locations are sufficiently close in proximity to ensure that the principal is physically present at each location on a regular and routine basis. In addition, as discussed above, while a member has the flexibility to use appropriate technology as part of its supervisory systems, FINRA does not believe that such technology can replace the effectiveness of on-site supervision. Thus, FINRA declines to remove this requirement.

In response to the comment to clarify the use of the terms "on-site supervisor" and "designated principal" in Supplementary Material .04 to make it clear that the terms are not intended to encompass a member's "up-the-chain" reporting structure, FINRA clarifies that, for purposes of this provision, the two terms refer to one person—the on-site principal assigned and designated to supervise the OSJ pursuant to proposed FINRA Rule 3110(a)(4).[51]

(e) Comments on Proposed FINRA Rule 3110(b)(2) and Supplementary Material .06

As stated above, proposed FINRA Rule 3110(b)(2) would require that a member have supervisory procedures for the review by a registered principal, evidenced in writing, of all transactions relating to the member's investment banking or securities business. Proposed Supplementary Material .06 (Risk-based Review of Member's Investment Banking and Securities Business) would permit a member to use a risk-based system to review these transactions.

Two commenters to the Initial Filing requested that FINRA clarify in the body of FINRA Rule 3110(b)(2) that members may use risk-based reviews of their investment banking and securities transactions.[52] Alternatively, one commenter requested that FINRA eliminate the word "all" in proposed FINRA Rule 3110(b)(2) to clarify that the rule language is modified by proposed Supplementary Material .06.[53]

FINRA declines to make the suggested changes. Proposed FINRA Rule 3110(b)(2) would transfer into the Consolidated FINRA Rulebook a member's fundamental obligation regarding principal review of all transactions relating to its investment banking and securities business, while at the same time providing supplementary material that would permit, but does not require, a member to conduct risk-based reviews of such transactions. Also, as FINRA noted in the Initial Filing, supplementary material is part of the rule, and FINRA believes that locating the risk-based discussion in Supplementary Material .06 improves the readability of the rule without affecting the weight or significance of the provision.

In addition, as FINRA stated in the Initial Filing the term "risk-based," which the proposed rule uses in several places, describes the type of methodology a member may use to identify and prioritize for review those areas that pose the greatest risk of potential securities laws and SRO rule violations. FINRA acknowledges that members may need to prioritize their review processes due to the volume of information that must be reviewed by using a review methodology based on a reasonable sampling of information in which the sample is designed to discern the degree of overall compliance, the areas that pose the greatest numbers and risks of violation, and any possibly needed changes to firm policies and procedures. FINRA believes that allowing risk-based review in limited circumstances improves investor protection by ensuring that those areas that pose the greatest potential for investor harm are reviewed more quickly to uncover potential violations.

(f) Comments on Proposed FINRA Rule 3110(b)(4) and Supplementary Materials .07–.10

(1) Review of Internal Communications

As proposed in the Initial Filing, FINRA Rule 3110(b)(4) (Review of Correspondence and Internal Communications) would require a member to have procedures to review incoming and outgoing written (including electronic) correspondence and internal communications relating to its investment banking or securities business. The supervisory procedures must ensure that the member properly identifies and handles in accordance with firm procedures, customer complaints, instructions, funds and securities, and communications that are of a subject matter requiring review under FINRA or MSRB rules and the federal securities laws. Also as originally proposed, Supplementary Material .07 (Risk-based Review of Correspondence and Internal Communications) would permit a member to use risk-based principles to decide the extent to which additional policies and procedures for the review of incoming and outgoing written (including electronic) correspondence with the public and internal communications that fall outside of the subject matters listed in proposed FINRA Rule 3110(b)(4) are appropriate for its business and structure.

A number of commenters to the Initial Filing suggested that proposed FINRA Rule 3110(b)(4) and proposed Supplementary Material .07 could be read to create a new affirmative obligation to supervise all written (including electronic) internal communications relating to investment banking and securities activities.[54] Commenters requested that FINRA either revise these provisions to reflect the guidance in *Regulatory Notice* 07–59 (December 2007) regarding the review of internal communications[55] or that

[50] SIFMA.

[51] FINRA also noted in the Initial Filing that, in response to comments, it had modified the proposed supplementary material to make it clear that the presumption applies only to the designation of the on-site principal supervisor required for FINRA Rule 3110(a)(4) purposes in each OSJ location.

[52] SIFMA, NSCP.

[53] SIFMA.

[54] CAI, ICI, T. Rowe Price, Schwab, FSI, SIFMA.

[55] CAI, ICI, T. Rowe Price, SIFMA.

FINRA remove the review requirements for internal communications (including the use of a risk-based review standard) from the provisions.[56]

In response to the commenters' concerns, FINRA has modified proposed FINRA Rule 3110(b)(4) and Supplementary Material .07 to more precisely reflect the guidance in *Regulatory Notice* 07–59 that a member must have supervisory procedures to provide for the member's review of its internal communications to properly identify communications that are of a subject matter that require review under FINRA or MSRB rules and the federal securities laws and that, by employing risk-based principles, the member must decide the extent to which additional policies and procedures for the review of additional internal communications are necessary for its business and structure. These modifications reflect FINRA's intent, as noted in the Initial Filing, to codify *Regulatory Notice* 07–59's guidance regarding the supervision of electronic communications.[57]

(2) Evidence of Review

Proposed Supplementary Material .08 (Evidence of Review of Correspondence and Internal Communications) would clarify that merely opening a communication is not sufficient review. Instead, a member must identify what communication was reviewed, the identity of the reviewer, the date of review, and the actions taken by the member as a result of any significant regulatory issues identified during the review.

One commenter requested that FINRA delete the provision stating that merely opening a communication is not sufficient review.[58] FINRA addressed this issue in the Initial Filing and declined to make the suggested change. As noted in the Initial Filing, proposed Supplementary Material .08 would codify existing guidance that FINRA believes remains appropriate, especially as it is unclear how an opened communication, by itself, would be sufficient to demonstrate actual review of the communication.[59] For this reason, FINRA declines to delete the provision.

The same commenter also requested that FINRA clarify what other evidence of review is necessary if an email does not raise any issues that warrant follow-up. FINRA does not believe further clarification is necessary as proposed Supplementary Material .08 specifies the required evidence of review. As noted above, the proposed supplementary material would require a member to identify what communication was reviewed, the identity of the reviewer, the date of review, and the actions taken by the member as a result of any significant regulatory issues identified during the review. Where review has not identified any such issues, this last requirement would not apply.

The commenter also suggests that FINRA assist members' management of recordkeeping costs by clarifying that a member does not have to retain the specified information fields required by Supplementary Material .08 for communications that are reviewed through electronic review systems or lexicon-based screening tools if those messages do not generate review alerts. FINRA declines to accept this suggestion; the required documentation is necessary to demonstrate that the communication was actually reviewed. In addition, failing to record and retain such information, such as the identity of the reviewer, could be contrary to a member's record retention obligations required under both FINRA and SEC rules.[60]

(3) Delegation of Review Functions

Proposed Supplementary Material .09 (Delegation of Correspondence and Internal Communication Review Functions) would permit a supervisor/principal to delegate certain review functions, while remaining ultimately responsible for the performance of all necessary supervisory reviews.

One commenter to the Initial Filing suggested that the proposed supplementary material be included in the body of proposed FINRA Rule 3110(b)(4).[61] FINRA declines to make the suggested change. As stated above, supplementary material is part of the rule, and FINRA believes that locating this provision in Supplementary Material .09 improves the readability of the rule without affecting the weight or significance of the provision.

(4) Retention of Correspondence and Internal Communications

Proposed Supplementary Material .10 (Retention of Correspondence and Internal Communications) would require, among other things, that a member retain internal communications and correspondence of associated persons relating to the member's investment banking or securities business for the period of time and accessibility specified in SEA Rule 17a–4(b) (not less than three years, the first two years in an easily accessible place).[62]

One commenter to the Initial Filing requested that FINRA expand the record retention period in proposed Supplementary Material .10 to six years to match the eligibility provisions for customer arbitration disputes in FINRA Rule 12206 (Time Limits).[63] FINRA declines to make the suggested change. As noted in the Initial Filing, the proposed rule purposefully aligns the record retention period for communications with the SEC's record retention period for the same types of communications to achieve consistent regulation in this area.

(g) Comments on Proposed FINRA Rule 3110(b)(5)

Proposed FINRA Rule 3110(b)(5) (Review of Customer Complaints) would require members to have supervisory procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints.

(1) New Requirement for Certain Members

One commenter to the Initial Filing noted that the requirement to "acknowledge" customer complaints would be a new requirement for firms currently required to comply only with NASD rules.[64] FINRA previously addressed this comment in the Initial

[56] FSI, Schwab.

[57] One commenter, ICI, also questioned the meaning of the phrase "and funds and securities" in proposed FINRA Rule 3110(b)(4)'s language stating that a member's supervisory procedures must "ensure that the member properly identifies 'and handle[s] in accordance with firm procedures, customer complaints, instructions, and funds and securities, and communications that are of a subject matter that require review under FINRA and MSRB rules.'" The word "and" before "funds and securities" was a typographical error. As corrected, the provision requires that a member's supervisory procedures "must ensure that the member properly identifies and handles in accordance with firm procedures, customer complaints, instructions, funds and securities, and communications that are of a subject matter that require review under FINRA and MSRB rules."

[58] SIFMA.

[59] *See also Regulatory Notice* 07–59 (December 2007) ("Members should remind their reviewers that merely opening the communication will not be deemed a sufficient review.").

[60] *See* NASD Rule 3010(d)(3) (Retention of Correspondence) (to be replaced by proposed Supplementary Material .10) (both provisions require that, among other things, the person who reviewed correspondence be ascertainable from the member's retained records); *see also* SEA Rule 17a–4(b)(4) (requiring, among other things, that a broker-dealer's retained communications records include any approvals of communications sent).

[61] SIFMA.

[62] 17 CFR 240.17a–4(b).

[63] PIABA. PIABA also requested that FINRA propose a rule requiring that records pertaining to correspondence and internal communications as well as any other customer-related documents, be made available upon request to customers and former customers within a reasonable time and at no charge. FINRA considers the comment to be outside the scope of the proposed rule change.

[64] Schwab.

Filing and acknowledged that this requirement would be a new requirement for many FINRA members. Nevertheless, FINRA believes that the investor protection that this provision would provide outweighs any potential compliance burdens because requiring members to acknowledge customer complaints would help to ensure that customers are timely notified that their complaints have been received and recorded, and that they can expect the issues raised in their complaints to be addressed within a reasonable period. In addition, the records of acknowledgements should provide supervisory personnel with another tool for confirming that the issues raised in complaints are ultimately addressed through timely responses. The acknowledgment requirement also should help to focus members' attention on specific situations where investor harm may be occurring, as well as to alert members to more general problems customers may be having with their registered representatives, products, or services. In this regard, the acknowledgement requirement may serve to strengthen members' risk assessment capabilities. Further, the absence in the proposed rule of a specific time period in which members must acknowledge their receipt of customer complaints provides members a certain amount of flexibility in designing their supervisory procedures to address this new responsibility. As noted in the Initial Filing, however, members would be expected to explain the reasonableness of a period in excess of 30 days.

(2) Exclusion of Oral Complaints

One commenter supported the decision to include only written customer complaints in proposed FINRA Rule 3110(b)(5).[65] Another commenter, however, stated that members should be required to reduce an oral complaint to writing or to provide the customer with a form.[66] As FINRA noted in the Initial Filing, FINRA declined to include oral complaints because they are difficult to capture and assess, whereas members can more readily capture and assess written complaints. For these reasons, FINRA continues to believe that proposed FINRA Rule 3110(b)(5) should include only written customer complaints. However, as FINRA stated in the Initial Filing, FINRA encourages members to provide customers with a form or other format that will allow customers to detail their complaints in writing.[67] In addition, FINRA continues to remind members that the failure to address any customer complaint, written or oral, may be a violation of FINRA Rule 2010.

(3) Guidance on Certain Types of Customer Complaints

One commenter asked how FINRA Rule 3110(b)(5)'s proposed requirements would apply to repetitious, threatening, or anonymous complaints received by members. Specifically, the commenter asked whether a member could address repeated complaints from the same person on the same issue by responding only once to the issue and informing the complainant that no further responses would be forthcoming. The commenter also requested that FINRA amend proposed FINRA Rule 3110(b)(5) to recognize that members cannot respond to anonymous customer complaints.[68] In addition, the commenter asked whether an oral response to a complaint would be appropriate, as long as the member maintained sufficient records to document the response.

Proposed FINRA Rule 3110(b)(5) was drafted in a manner to provide members with the flexibility to design supervisory procedures that would be appropriate for each member's size, business model, and the volume and type of complaints received. Accordingly, the proposed provision does not set forth prescriptive requirements a member must use to acknowledge and respond to a written complaint or how a firm must handle repetitious, threatening, or anonymous complaints. For many customer complaints, a member may evidence both its acknowledgement and response in one communication. For complaints raising multiple or complicated issues, members may choose first to acknowledge the complaint and send a following response after completing a review of the issues raised. With respect to repetitious complaints from the same individual that raise no new issues, a member may choose to provide a response only once. A member may also consider whether to include a notation on the response that the member will not provide additional responses to subsequent complaints from that individual raising the same issues. For complaints containing threats, in addition to acknowledging and responding to the complaint, the member may wish to adopt procedures to review such complaints in light of the potential seriousness of the threat and decide on appropriate action, up to, and including, contacting the appropriate law enforcement authority, if deemed necessary. FINRA also notes that, while members would not be able to acknowledge or respond to truly anonymous complaints, a member would still have an obligation to capture and review the complaint to determine whether it contains a legitimate grievance.

(h) Comments on Proposed FINRA Rule 3110(b)(6) and Supplementary Material .11

Proposed FINRA Rule 3110(b)(6) (Documentation and Supervision of Supervisory Personnel) is based largely on existing provisions in NASD Rule 3010(b)(3) requiring a member's supervisory procedures to set forth the member's supervisory system and to include a record of the member's supervisory personnel with such details as titles, registration status, locations, and responsibilities. The proposed rule also would include two new provisions:

- Proposed FINRA Rule 3110(b)(6)(C) requiring a member to have procedures prohibiting its supervisory personnel from supervising their own activities and reporting to, or having their compensation or continued employment determined by, a person the supervisor is supervising (the provision also would provide a limited size and resources exception to this general requirement); and
- Proposed FINRA Rule 3110(b)(6)(D) requiring a member to have procedures to prevent the standards of supervision required pursuant to proposed FINRA Rule 3110(a) from being reduced in any manner due to any conflicts of interest that may be present with respect to the associated person being supervised, such as the person's position, the amount of revenue such person generates for the firm, or any compensation that the supervisor may derive from the associated person being supervised.

Proposed Supplementary Material .11 (Supervision of Supervisory Personnel) would provide that a member generally will need to rely on the exception provided in proposed FINRA Rule 3110(b)(6)(C) only because it is a sole proprietor in a single-person firm or where a supervisor holds a very senior executive position within the firm.

[65] T. Rowe Price.

[66] PIABA.

[67] See Exhibit 2b, page 249.

[68] T. Rowe Price. The commenter also requested that FINRA clarify that anonymous complaints do not need to be considered complaints for purposes of FINRA Rule 4530 (Reporting Requirements). FINRA considers the commenter's request for clarification regarding FINRA Rule 4530 to be outside the scope of the proposed rule change, though FINRA notes that the FINRA Rule 4530 reporting system instructs members regarding how to report anonymous complaints for purposes of the rule.

(1) Commission Overrides

One commenter requested that FINRA add rule language explaining that the prohibition against supervisors having their compensation determined by a person who is supervised, does not include a supervisor receiving commission overrides.[69] FINRA addressed this comment in the Initial Filing and declined to make the suggested change. FINRA noted in the Initial Filing that, although a supervised person may affect his or her supervisor's compensation (through overrides or in other ways), proposed FINRA Rule 3110(b)(6) concerns only those situations where a supervised person directly controls a supervisor's compensation or continued employment. In the commission override context, however, the member would still need to address this conflict in its procedures; that is, the override may not be a factor in reducing the standard of supervision in any manner. For these reasons, FINRA declines to make the suggested change. In addition, FINRA notes that the commenter expressly agreed with FINRA's statements on this point in the Initial Filing and has not provided additional information to support adding the suggested rule language.

(2) Conflicts of Interest

Some commenters expressed concern that requiring members to have procedures to prevent the supervision standards from being reduced in any manner due to any conflicts of interest that may be present creates a strict liability standard that would require members to eliminate any and all conflicts of interest that could be inconsistent with existing supervisory roles, no matter how slight.[70] Commenters suggested that FINRA either eliminate the provision or amend the provision to include a reasonableness standard.[71]

FINRA disagrees with this strict liability argument and declines to eliminate the provision. The reasonably designed standard that applies to the supervisory procedures required throughout proposed FINRA Rule 3110(b) does not recognize a strict liability obligation requiring identification and elimination of all conflicts of interest. Rather, the reasonably designed standard recognizes that while a supervisory system cannot guarantee strict compliance, the system must be a product of sound thinking and within the bounds of common sense, taking into consideration the factors that are unique to a member's business.[72] Accordingly, a member's conflict of interest procedures should reflect a member's sound, common sense identification of potential conflicts of interest, based on factors unique to the member's business, and address how the member will prevent these conflicts from reducing in any manner the standards of supervision for its supervisory personnel.

FINRA also declines the suggestion to include a reasonableness standard. As FINRA noted in the Initial Filing, amending the proposed conflict of interest requirement in this manner would have the effect of altering the standards within the rule that describe the outcome the procedures should try to achieve, resulting in an impermissible relaxation of the standard around which the rule is designed.

(3) Limited Exception

One commenter stated, without additional detail, that there were "potentially limitless" situations where a member would need to rely on the proposed exception from the general supervisory requirements and requested that FINRA amend proposed Supplementary Material .11 to provide only illustrative examples of when a member could rely on the exception.[73] FINRA declines to make the suggested change. The proposed exception is specifically based on a member's inability to comply with the general supervisory requirements because of the member's size or supervisory personnel's position within the firm, and proposed Supplementary Material .11 reflects FINRA's belief that a member will generally need to rely on the exception only because it is a sole proprietor in a single-person firm or where a supervisor holds a very senior executive position within the firm. However, a member may still rely on the exception in other instances where it cannot comply because of its size or supervisory personnel's position within the firm, provided the member documents the factors used to reach its determination and how the supervisory arrangement with respect to the supervisory personnel otherwise comports with proposed FINRA Rule 3110(a).

(i) Comments on Proposed FINRA Rule 3110(b)(7) and Supplementary Material .12

FINRA Rule 3110(b)(7) (Maintenance of Written Supervisory Procedures) would require a member to retain and keep current, a copy of the member's written supervisory procedures at each OSJ and at each location where supervisory activities are conducted on behalf of the member. As proposed in the Initial Filing, the member would also have to communicate any amendments to its written supervisory procedures throughout its organization. Proposed Supplementary Material .12 (Use of Electronic Media to Communicate Written Supervisory Procedures) would permit a member to satisfy its obligation to communicate its written supervisory procedures, and any amendments thereto, using electronic media, provided that the member complies with certain conditions.

(1) Communicating Written Supervisory Procedures

Several commenters to the Initial Filing requested that FINRA revise proposed FINRA Rule 3110(b)(7) and Supplementary Material .12 to require that members communicate such material only to relevant associated persons and/or supervisory personnel rather than to all associated persons.[74] The commenters suggested it would be inappropriate to communicate written supervisory procedures and amendments throughout a firm if those procedures or amendments are relevant only to a limited business line or set of associated persons. In response to these concerns, FINRA has revised proposed FINRA Rule 3110(b)(7) and Supplementary Material .12 to clarify that a member is responsible for promptly communicating its written supervisory procedures and amendments to all associated persons to whom such written supervisory procedures and amendments are relevant based on their activities and responsibilities. FINRA declines to adopt the suggestion to limit the requirement to distribute written supervisory procedures and amendments to "supervisory personnel." As noted further below, all associated persons are deemed to have knowledge of and are subject to a member's supervisory procedures and amendments. Requiring a member to

[69] FSI.

[70] Schwab, SIFMA, FSI. As part of its argument, FSI noted that the Initial Filing's discussion of examples of potential conflicts of interest included "any other factor that would present a conflict" and asked that FINRA clarify that this language would apply only to conflicts of interest that are known, or should reasonably be known, to the firm.

[71] Schwab, SIFMA.

[72] *See Notice to Members* 99–45 (June 1999).

[73] CAI.

[74] SIFMA, T. Rowe Price, NSCP (requesting changes to Supplementary Material .12), Schwab (requesting changes to FINRA Rule 3110(b)(7)).

communicate to all associated persons, and not just "supervisory personnel," the written supervisory procedures and amendment relevant to their activities helps ensure that the member's associated persons have this requisite knowledge.

(2) Accessibility of Written Supervisory Procedures

As proposed in the Initial Filing, Supplementary Material .12 required that a member using electronic media to communicate its written supervisory procedures make its procedures "quickly and easily accessible" to associated persons through, for example, the member's intranet system. One commenter requested that the term "quickly and easily accessible" be modified to "readily accessible," which the commenter contended is a term regularly used in FINRA and SEC rules.[75] In response, FINRA has modified proposed Supplementary Material .12 to use this term.

(3) Use of "Promptly"

The same commenter also requested that FINRA delete the term "promptly" from proposed Supplementary Material .12's requirement that members promptly post all written supervisory procedures amendments to the electronic media. Instead, the commenter requested that FINRA require that the written supervisory procedures be "timely communicated." FINRA, however, declines to make this change as it views "promptly" and "timely" as having the same meaning in the context of updating and distributing written supervisory procedures amendments. In addition, FINRA has amended proposed FINRA Rule 3110(b)(7) to clarify that each member must promptly amend its written supervisory procedures to reflect changes in applicable securities laws or regulations, including FINRA and MSRB rules, and as changes occur in its supervisory system and has included in the proposed rule a member's general obligation to promptly communicate its written supervisory procedures and amendments. FINRA clarifies that, for purposes of distributing a member's written supervisory procedures amendments, "promptly" means prior to the effective date of any changes (or as expeditiously as possible following any immediately effective changes) in the securities laws or regulations or FINRA and MSRB rules necessitating the amendments.

[75] SIFMA.

(4) Notification of "Substantive" Amendments

In addition, the commenter requested that FINRA revise the proposed supplementary material's requirement to notify associated persons of amendments to a member's written supervisory procedures to require notification of only "substantive" amendments. FINRA declines to make the suggested change, especially as it is unclear what standard members could use to consistently identify a "substantive" amendment for these purposes. FINRA, however, has amended this provision to require that associated persons be notified that amendments relevant to their activities and responsibilities have been made to the written supervisory procedures.

(5) Verifying Associated Persons' Review of Amendments

As proposed in the Initial Filing, Supplementary Material .12 required that a member using electronic media to communicate its written supervisory procedures be able to verify, at least once each calendar year through electronic tracking, written certifications, or other means that associated persons have reviewed the written supervisory procedures. Commenters requested that FINRA eliminate the verification requirement or revise the provision to apply only to supervisory personnel.[76] As one commenter noted, proposed FINRA Rule 3110(b)(7) does not contain a similar requirement for the dissemination of hard copies of written supervisory procedures.[77] In response, FINRA has deleted this requirement from proposed Supplementary Material .12. FINRA views such annual verification process as unnecessary in light of the fact that all associated persons are deemed to have knowledge of and are subject to a member's supervisory procedures and amendments irrespective of whether members verify that their associated persons have reviewed such procedures.

(j) Comments on Proposed FINRA Rule 3110(c) and Supplementary Materials .14–.15

Proposed FINRA Rule 3110(c)(1) (Internal Inspections), based largely on NASD Rule 3010(c)(1), would retain the existing requirements for each member to review, at least annually, the businesses in which it engages and inspect each office on a specified schedule. The provision also would retain the existing requirement that the member's annual review must be reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations and FINRA and MSRB rules.

Proposed FINRA Rule 3110(c)(3)(A) would require members to prevent the inspection standards required pursuant to proposed FINRA Rule 3110(c)(1) from being reduced in any manner due to any conflicts of interest that may be present, including but not limited to, economic, commercial, or financial interests in the associated persons and businesses being inspected.

Proposed FINRA Rule 3110(c)(3)(B) would generally prohibit an associated person from conducting a location's inspection if the person is either assigned to that location or is directly or indirectly supervised by someone assigned to that location. Proposed FINRA Rule 3110(c)(3)(C) would provide an exception from these general prohibitions, while proposed Supplementary Material .15 (Exception to Persons Prohibited from Conducting Inspections) would set forth the general presumption that only a member with one office or an independent contractor business model will need to rely upon the exception.

Proposed Supplementary Material .14 (General Presumption of Three-Year Limit for Periodic Inspection Schedules) would set forth a general presumption of a three-year limit for periodic non-branch location inspection schedules.

(1) Reference to Inspection Standards

One commenter objected to proposed FINRA Rule 3110(c)(3)(A)'s reference to FINRA Rule 3110(c)(1) on the basis that this subparagraph does not contain any inspection standards.[78] However, as noted above, proposed FINRA Rule 3110(c)(1) would retain the requirement that a member's annual review of its business (which would include location inspections conducted during that review) must be reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations and with applicable FINRA and MSRB rules.[79]

[76] SIFMA, Schwab (eliminate), NSCP (revise).

[77] SIFMA.

[78] NSCP.

[79] NSCP also asks that FINRA clarify that the term "reduced in any manner" means that the frequency of internal inspections should not be reduced because of any conflicts of interest. FINRA notes that the term "reduced in any manner" does not have a fixed interpretation, but rather should be considered within the context of proposed FINRA Rule 3110(c)(1)'s reasonably designed inspection standards discussed above.

(2) Conflicts of Interest

Some commenters suggested that proposed FINRA Rule 3110(c)(3)(A) would create a strict liability standard that would require a firm to identify and eliminate any conflicts of interest, no matter how slight, that would prevent a location's inspection standards from being reduced in any manner and suggested that the provision be amended to include a reasonableness standard.[80] FINRA disagrees with commenters' strict liability argument. The standard does not require identification and elimination of all possible conflicts of interest. Rather, the proposed provision is intended to address conflicts of interest that would cause diminished inspection standards for a location that, in turn, could result in a failure to detect violative conduct committed at that location. FINRA also does not believe proposed FINRA Rule 3110(c)(3)(A) should include a reasonableness standard. As FINRA noted in the Initial Filing, this proposed requirement does not pertain to a member's supervisory procedures, which a member must "reasonably design" to achieve compliance with applicable federal laws and regulations and SRO rules, but instead defines a standard around which inspections must be conducted.

(3) Associated Persons Conducting Inspections

One commenter requested deleting proposed FINRA Rule 3110(c)(3)(B)'s proposed restrictions prohibiting certain associated persons from conducting a location's inspection on the basis that the restrictions would otherwise force firms to remove valuable on-site personnel who routinely conduct inspections and carry out supervisory procedures in the office.[81] As stated in the Initial Filing, FINRA believes that the proposed rule change would provide members with sufficient flexibility to conduct their inspections using only firm personnel. In addition, the proposed rule would provide an exception to the proposed restrictions for those members that cannot comply with the provision, either because of their size or business model. For these reasons, FINRA declines to make the suggested change.

(4) Reliance on the Limited Size and Resources Exception

One commenter requested that FINRA amend proposed Supplementary Material .15 to include home or administrative office personnel conducting home or administrative office inspections as one of the enumerated situations covered by the presumption.[82] Another commenter stated that it should not have to document its reasons for relying on the exception from the general inspection restrictions, especially when the documentation will not be in line with the general presumption in proposed Supplementary Material .15. The commenter also requested that FINRA revise the proposed supplementary material to provide only illustrative examples of when a member may rely upon the exception.[83]

FINRA declines to make the suggested changes. Proposed FINRA Rule 3110(c)(3)(B) would require that any reliance on the exception from its general restrictions must be documented. A member's documentation of its reliance on the exception is crucial to understanding whether the member has inspection procedures that are reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable FINRA and MSRB rules.

(5) Presumption of Three-Year Limit for Periodic Inspection Schedules

One commenter requested that FINRA eliminate proposed Supplementary Material .14 on the basis that it would be problematic for firms to meet the proposed supplementary material's presumption of a three-year limit for periodic non-branch location inspection schedules when conducting inspections for locations that, despite being used only one-day per calendar year, would be considered non-branch locations.[84] FINRA declines to make the suggested change. As noted in the Initial Filing, proposed Supplementary Material .14 merely establishes a three-year presumption and provides members with the flexibility to use an inspection schedule period that is either shorter or longer than three years. If a member chooses to use a periodic inspection schedule longer than three years, then the proposed supplementary material would require the member to properly document the factors used in determining the appropriateness of the longer schedule.

(k) Comments on Proposed FINRA Rule 3110(d)

(1) General Requirement

Proposed FINRA Rule 3110(d)(1) (Transaction Review and Investigation) would require a member to have supervisory procedures to review securities transactions that are effected for a member's or its associated persons' accounts, as well as any other "covered account," to identify trades that may violate the provisions of the SEA, its regulations, or FINRA rules prohibiting insider trading and manipulative and deceptive devices.

One commenter suggested that the proposed rule should be limited to identifying insider trading and not require trades to be reviewed for possible violations of rules regarding "manipulative and deceptive devices," especially as retail brokerages are already obligated under existing rules to review accounts for that type of activity.[85] The commenter noted that SEA Rule 10b5–1(a) states that "manipulative and deceptive devices" includes, among other things, insider trading. The commenter argued that "other things" could reasonably be expected to encompass manipulation of security prices as described in Section 9 of the SEA and asserted that detecting that type of activity could be costly and burdensome, especially for online brokerage services that would be "forced to establish electronic feeds of trading activity in covered accounts held at other member firms to enable the 'computerized surveillance of account activity' in those accounts."

The required review in proposed FINRA Rule 3110(d)(1) for "trades that may violate the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices" is taken from existing obligations in Incorporated NYSE Rule 342.21 (Trade Review and Investigation). FINRA believes that the continued use of this standard is appropriate for many of the same reasons identified by the Commission when it approved NYSE Rule 342.21. In approving NYSE Rule 342.21, the Commission noted that, among other things, the increased surveillance mandated by the rule "should have a positive impact upon the compliance efforts of Exchange members and member organizations[.]"[86] In addition, the Commission found that "mandating

[80] Schwab, SIFMA.

[81] CAI.

[82] CAI.

[83] T. Rowe Price.

[84] NSCP.

[85] NSCP.

[86] Securities Exchange Act Release No. 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988) (Order Approving File No. SR–NYSE–87–10).

such a thorough review will not only increase the possibility of detecting illegal trades, but also will have a deterrent effect on insider trading and manipulative and deceptive practices."[87] FINRA believes that the benefits identified by the Commission, which would continue to be present by adopting the standards of NYSE Rule 342.21 into the Consolidated FINRA Rulebook, would help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors, particularly since the provision covers the review of trading activity of the member in addition to its associated persons.

FINRA also notes that there is no obligation on members to establish electronic feeds of trading activity at other firms. As discussed in detail below, FINRA has revised the definition of "covered account" to clarify a member's obligations regarding which accounts must be reviewed. Under the new definition, members are required to review (1) accounts of an associated person (and certain of his or her family members) that are held at or introduced by the member; and (2) accounts held away from the member if the associated person is required to disclose the account pursuant to FINRA rules (currently, NASD Rule 3050 (Transactions for or by Associated Persons) and Incorporated NYSE Rule 407 (Transactions—Employees of Members, Member Organizations and the Exchange)). Thus, the only outside trading activity members are required to review under this provision is activity in a covered account that is disclosed to the member pursuant to other FINRA rules.[88] In addition, FINRA emphasizes that firms are permitted to take a risk-based approach to monitoring trading activity.

One commenter stated that the Initial Filing "appears to infer that firms may be required to, at a minimum, conduct periodic reviews of trading" and did not agree that this would always be the case for all firm personnel when using a risk-based review, as provided for under Rule 3110(d).[89] In the Initial Filing, FINRA stated that a "member's procedures should take into consideration the nature of the member's business, which would include an assessment of the risks presented by different transactions and different departments within a firm. Thus, while some members may need to develop restricted lists and/or watch lists, other members may only need to periodically review employee and proprietary trading. . . . [T]here is no requirement that a member examine every trade of every employee or every proprietary trade." As noted, the review would be informed by the firm's business model, and firms may determine that certain departments or employees pose a greater risk and examine trading in those accounts accordingly. There is no implied obligation on firms as to how best to conduct the reviews.

One commenter expressed concerns about a firm's ability to prevent violations of insider trading or the use of manipulative and deceptive devices, especially when supervising account activity occurring in an account held at another firm in which an associated person has a beneficial interest, where the firm will, at best, receive post transaction notification through confirmation statements.[90] The commenter asked FINRA to clarify that a firm's supervisory obligations for brokerage accounts held outside of the member is limited to detecting and reporting indicia of potential insider trading or use of manipulative and deceptive devices.

Section 15(g) of the SEA requires broker-dealers to "establish, maintain, and enforce written policies and procedures reasonably designed * * * to prevent the misuse * * * of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer."[91] Transaction review is one tool for firms in meeting this statutory obligation, in addition to steps such as information barriers and restricted lists that broker-dealers may implement to meet this requirement. Reviewing transactions can also help firms spot potential weaknesses in, or violations of, other procedures. Robust transaction review also provides a deterrent effect that can prevent insider trading and other manipulative or deceptive trading activity by associated persons. As noted above, the only account activity outside of the member firm that it must review under this provision is trading activity in certain accounts reported to the firm pursuant to other FINRA rules, and FINRA recognizes that the information firms receive regarding outside accounts may be less timely and less comprehensive than information firms have available with respect to accounts they hold or introduce.

One commenter requested that FINRA provide a substantial implementation period because implementing the new review process would be burdensome and time consuming, especially in light of the "covered accounts" definition.[92] FINRA would provide firms with adequate time to develop and establish policies and procedures for complying with new rules and obligations. FINRA notes, however, that the proposed procedures, in large part, help implement existing obligations for broker-dealers pursuant to Section 15(g) of the SEA. Thus, while some firms may need to revise and update procedures to comply with new requirements, FINRA expects that many members will already have some level of policies and procedures in place to meet their existing obligations under Section 15(g) of the SEA.

(2) "Covered Accounts"

As proposed in the Initial Filing, FINRA Rule 3110(d)(3)(A) defined "covered account" to include (i) any account held by the spouse, child, son-in-law, or daughter-in-law of a person associated with the member where such account is introduced or carried by the member; (ii) any account in which a person associated with the member has a beneficial interest; and (iii) any account over which a person associated with the member has the authority to make investment decisions. FINRA, however, has revised the definition as described below in response to comments.

One commenter asserted that the definition of "covered account" was unduly narrow and should include an associated person's parents, siblings, mother-in-law, and father-in-law, as well as any life partner.[93] Other commenters argued that the definition was too broad. For example, one commenter suggested limiting the scope of (ii) and (iii) to accounts introduced or carried by the member[94] while another commenter suggested that FINRA use a more uniform definition that does not differentiate between accounts that are introduced or carried by the member versus those that are not.[95] Other

[87] *Id.*

[88] FINRA notes that NASD Rule 3050(b)(2) requires the firm at which the trading activity is taking place to provide the member with duplicate confirmations, account statements, or other account information upon written request. Incorporated NYSE Rule 407(a) generally requires the member to promptly send duplicate confirmations and account statements.

[89] CAI.

[90] FSI.

[91] 15 U.S.C. 78*o*(g).

[92] CAI.

[93] PIABA.

[94] NSCP.

[95] SIFMA. This commenter also stated its belief that, for carrying members, an account should not be subject to review only by virtue of its being introduced by an unaffiliated correspondent broker. FINRA questions whether such accounts would

Continued

commenters stated that the definition of "covered account" should not include accounts of associated persons' adult children or their spouses.[96] One commenter stated that adult children and their spouses are under no obligation to provide associated persons with information related to their accounts introduced or carried by the member.[97] Another commenter asserted that extending review to this class of accounts will require an unnecessary and burdensome layer of filtering to an already "robust" system of compliance with no added benefit.[98]

In response to these comments, FINRA has revised the definition of "covered account." As amended, the transaction review requirements in the proposed rule would apply to two types of "covered accounts": (i) Certain accounts held at or introduced by the member and (ii) accounts that are reported to the member pursuant to other FINRA rules. Consequently, firms are under no obligation under this provision to review transaction information in accounts to which they do not have access to confirmations and account statements. In addition, FINRA has amended the definition of "covered account" to add the accounts of parents, siblings, fathers-in-law, mothers-in-law, and domestic partners if the account is held at or introduced by the member. Although some commenters requested that FINRA exclude accounts of adult children and spouses, the primary purpose of the rule is to help firms identify insider trading, and FINRA does not view the accounts of an associated person's adult children and spouses as presenting less risk for that type of trading activity than other accounts.[99] Thus, for those accounts in the first category above (i.e., those held at or introduced by the member), FINRA has expanded the definition to include additional family members. FINRA has also clarified that the only accounts held away from the member (or the member's clearing firm) that fall within the definition of "covered account" are those accounts of associated persons disclosed to the member pursuant to other FINRA rules.

(3) Internal Investigation Reporting

As proposed in the Initial Filing, FINRA Rule 3110(d)(2) would have required any member that engages in "investment banking services," to provide reports to FINRA regarding internal investigations within ten business days of the initiation of an investigation, update the status of all ongoing investigations each quarter, and report to FINRA within five business days of the completion of any internal investigation. As described below, FINRA is retaining the definition of "investment banking services" as proposed but has substantially revised the reporting requirements.

(A) "Investment Banking Services"

The reporting requirements in proposed FINRA Rule 3110(d)(2) would apply only to those firms that engage in "investment banking services." Proposed FINRA Rule 3110(d)(3)(B) defines the term "investment banking services" to include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer, or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.[100]

Several commenters to the Initial Filing requested that FINRA exclude certain activity from the definition of "investment banking services." One commenter suggested that distribution activities undertaken by firms in connection with investment companies and 529 plans should not fall under this definition as long as a firm engaged in this activity does not also engage in the functions typically seen as traditional underwriting activities, such as those described in the proposal.[101] Other commenters requested that FINRA revise the definition to exclude activities such as serving as a principal underwriter or a selling firm of variable annuities[102] or selling shares of real estate investment trusts, variable annuity contracts, and limited partnerships.[103]

FINRA does not believe that any of the categories of activity identified by the commenters should be categorically excluded from the definition of "investment banking services," given its limited use for the purposes of proposed FINRA Rule 3110. All members, including those who engage in "investment banking services," are required to include in their supervisory procedures a process for reviewing securities transactions and promptly conducting an internal investigation into any trade that may violate the provisions of the SEA, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices. The only additional requirement of those firms that engage in "investment banking services" is that they report information regarding their internal investigations to FINRA. Because individuals engaged in investment banking activities may have special access to material, non-public information,[104] which increases the risk of insider trading by those individuals, FINRA believes that this additional reporting requirement is appropriate. To the extent the commenters are correct that certain types of underwriting activities do not present the same risks of insider trading, the instances of reporting obligations on firms that only engage in those activities should not be significant. To the extent such firms do have internal investigative actions to report, FINRA believes that they should be reported.

(B) Reporting Requirements

Several commenters suggested that FINRA eliminate the requirement that members must, within ten business days of the initiation of an internal investigation, file a written report and replace it with more targeted disclosure

generally be subject to review under the proposed rule because an account held by a carrying firm for an unaffiliated correspondent broker would generally not be an account of the carrying firm or one of its associated persons.

[96] Schwab, T. Rowe Price.

[97] Schwab.

[98] T. Rowe Price.

[99] *See*, e.g., Securities Exchange Act Release No. 43154 (August 15, 2000), 65 FR 51716 (August 24, 2000) (noting that the Commission's experience "indicates that most instances of insider trading between or among family members involve spouses, parents and children, or siblings"). *See also* Securities Exchange Act Release No. 42259 (December 20, 1999), 64 FR 72590, 72604 (December 28, 1999) (noting that the inclusion of children in proposed Rule 10b5–2 was not intended to be limited to minor children because the Commission's "enforcement cases in this area typically involve communications between parents and adult sons or daughters"). For this same reason, FINRA declines to incorporate the definitions in NYSE *Information Memo* 89–17 (April 4, 1989), which excepted from the covered accounts outlined in NYSE *Informotion Memo* 88–21 (July 29, 1988) those accounts held by children of employees and their spouses who do not reside in the same household with or are not financially dependent on the employee. *See* Schwab, SIFMA.

[100] One commenter asked that FINRA clarify that this definition only applies to proposed FINRA Rule 3110 and not to other rules. *See* CAI. Paragraph (d)(3) begins with the language "For purposes of this Rule"; consequently, the proposed definition is solely for purposes of determining those firms subject to the proposed reporting requirement in proposed FINRA Rule 3110(d)(2). FINRA notes, however, that it has proposed to use the same definition for purposes of the proposed research analyst conflict of interest rules. *See Regulotory Notice* 08–55 (October 2008).

[101] T. Rowe Price.

[102] CAI.

[103] FSI.

[104] See, e.g., *United Stotes v. Contorinis*, 692 F.3d 136, 144 (2d Cir. 2012) (affirming co-portfolio manager's conviction for insider trading and securities fraud based on tips received from an investment banker with material, non-public information regarding pending merger discussions).

within a more reasonable time frame, such as that in Incorporated NYSE Rule 351(e) (Reporting Requirements).[105] One commenter stated that firms already have robust and detailed procedures for complying with the reporting requirements in Incorporated NYSE Rule 351(e), and FINRA's proposed changes would be costly and burdensome to implement and would not appear to yield substantial benefits, especially as members cannot know whether an internal investigation has viability or merit within ten business days.[106]

In light of the comments, FINRA has modified the reporting obligations for firms that are engaged in investment banking services in a manner that reduces the potential burden for firms, while also providing necessary information to assist FINRA in preventing and detecting violations of insider trading and use of manipulative and deceptive devices. First, FINRA has eliminated the requirement that firms file an initial report of an internal investigation within ten business days of its commencement and has replaced it with a quarterly reporting requirement. Under the amended provision, within ten business days of the end of each calendar quarter, a member engaged in investment banking services must file a written report describing each internal investigation initiated in the previous calendar quarter. The report must include the identity of the member, the date each internal investigation commenced, the status of each open internal investigation, the resolution of any internal investigation reached during the previous calendar quarter, and, with respect to each internal investigation, the identity of the security, trades, accounts, associated persons of the member, or associated person of the member's family members holding a covered account, under review, and that includes a copy of the member's policies and procedures required by proposed FINRA Rule 3110(d)(1). Also, as noted above, if a member subject to this requirement did not have an open internal investigation or either initiate or complete an internal investigation during a particular calendar quarter, the member would not be required to submit a report for that quarter. Second, FINRA has replaced the proposed requirement to report the completion of each internal investigation within five business days of its completion with a more focused requirement that is limited to investigations that resulted in a finding of violation. Under the amended provision, members engaged in investment banking services must, within five business days of completion of an internal investigation in which it was determined that a violation of the provisions of the SEA, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices had occurred, file with FINRA a written report detailing the completion of the investigation, including the results of the investigation, any internal disciplinary action taken, and any referral of the matter to FINRA, another SRO, the SEC, or any other federal, state, or international regulatory authority.

One commenter questioned the need to file reports of investigations that did not result in a finding of violation, stating that the Initial Filing, more than the rule text, indicates that reports are required even if violations have not been found during the investigation.[107] The commenter believed that additional reporting is unnecessary and exceeded the reporting requirements in FINRA Rule 4530 (Reporting Requirements). The commenter also asserted that FINRA has not provided any rationale for why firms must still file a report even when violations have not been found during the investigation.

Unlike FINRA Rule 4530, proposed FINRA Rule 3110(d) would require more targeted and detailed reporting. While FINRA Rule 4530(b) requires reporting only where a member concludes or reasonably should have concluded that an associated person of the member or the member itself has violated, among other things, any securities-related law or rule,[108] the proposed reporting requirement in proposed FINRA Rule 3110(d)(2) would require that members engaged in investment banking services report investigations (and results of those investigations) of securities transactions effected for the accounts of the member, the member's associated persons, and any other covered account[109] that may violate the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices, regardless of whether a violation was ultimately discovered. Information regarding internal investigations that do not result in a finding of violation must be included in the quarterly report. FINRA believes that this reporting obligation is necessary to help protect investors and market integrity. As described in the Initial Filing, the rationale for filing a report when no violation has been found by the member is because a fact pattern that may result in a member concluding that no misconduct has occurred could nonetheless prove vital to FINRA in connecting the underlying conduct to other conduct about which the member may not know.

(l) Comments on Proposed FINRA Rule 3120

All of the comments FINRA received regarding proposed FINRA Rule 3120 (Supervisory Control System) addressed the provisions requiring a member that meets a specified gross revenue threshold in the preceding year to include additional content in the proposed rule's annual report to senior management. FINRA originally proposed a gross revenue threshold of $150 million or more in the Initial Filing; however, as discussed further below, FINRA has revised the threshold to $200 million or more.

The required additional content includes a tabulation of the reports pertaining to the previous year's customer complaints and internal investigations made to FINRA. Also, the report must include a discussion of the preceding year's compliance efforts, including procedures and educational programs, in each of the following areas: (1) Trading and marketing activities; (2) investment banking activities; (3) antifraud and sales practices; (4) finance and operations; (5) supervision; and (6) anti-money laundering.

(1) Revenue Threshold

One commenter suggested that all members be required to include the supplemental information in the report, not merely those members reporting more than $150 million in revenue.[110] FINRA addressed this comment in the Initial Filing and declined to make the suggested change. As FINRA noted in that rule filing, FINRA believes that the additional information reported by

[105] SIFMA, T. Rowe Price.

[106] SIFMA.

[107] T. Rowe Price.

[108] *See* FINRA Rules 4530(b) and 4530.01.

[109] As noted above, for purposes of proposed FINRA Rule 3110(d), a "covered account" is defined to include: (1) Any account held by the spouse, domestic partner, child, parent, sibling, son-in-law, daughter-in-law, father-in-law, or mother-in-law of a person associated with the member where such account is introduced or carried by the member; (2) any account introduced or carried by the member in which a person associated with the member has a beneficial interest; (3) any account introduced or carried by the member over which a person associated with the member has the authority to make investment decisions; and (4) any account of a person associated with a member that is disclosed to the member pursuant to NASD Rule 3050 or NYSE Rule 407, as applicable.

[110] PIABA.

members meeting the gross revenue threshold, now proposed as $200 million or more, would prove to be valuable information for FINRA's regulatory program, especially as Incorporated NYSE Rule 342.30's annual report supplemental information was a valuable tool for the NYSE regulatory program.[111] Also, as FINRA noted in the Initial Filing, such information would be valuable compliance information for the senior management of the firm.

FINRA, however, recognizes the burden the additional content requirements could place on FINRA members and, as a result, proposed only requiring certain members to include such additional content in their reports. Although FINRA considered several alternative metrics (e.g., number of registered persons), FINRA decided to use a gross revenue metric. FINRA has further attempted to balance the value of the information with the burden by increasing the gross revenue threshold from the $150 million threshold proposed in the Initial Filing to $200 million. FINRA believes that the revised threshold strikes the appropriate balance as it encompasses larger dual member firms, members engaged in significant underwriting activities (including variable annuity principal underwriting and fund distributions) and substantial trading activities or market making business, and members with extensive sales platforms—approximately 160 member firms in total, for which the additional content requirements would provide a valuable resource in the context of understanding and examining those firms and their activities, which can generally be more complex or sizeable than smaller firms' activities. FINRA also took into account the fact that most members meeting that threshold already comply with Incorporated NYSE Rule 342.30's reporting requirement. Further, the metric is easily determined by reference to the member's most recent FOCUS reports in the calendar year prior to the annual report. FINRA continues to believe that its rationale supports the gross revenue threshold, as revised to $200 million, and again declines to make the suggested change.

(2) Additional Content Requirements

One commenter suggested that members should have the flexibility to determine the content of their respective annual reports and requested that the additional content requirements listed above be revised as merely examples of additional report content.[112] Other commenters suggested that the additional content topics were vague and requested that FINRA provide more guidance (e.g., definitions, examples) on the additional content requirements.[113] In particular, one commenter asked whether the tabulation of reports pertaining to customer complaints and internal investigations was the same as the customer complaint data for FINRA Rule 4530.[114]

FINRA disagrees with the commenters' suggestions that the supplementary information topics are vague and require examples or definitions. The topics refer to specific components common to a member's business. In addition, as FINRA noted in the Initial Filing, with the exception of risk management (which is no longer included, as discussed below), the categories listed above are incorporated from the annual report content requirements of Incorporated NYSE Rule 342.30 (Annual Report and Certification) and are familiar to many of the firms that would be required to comply with proposed FINRA Rule 3120's additional content requirements. Also, FINRA made clear in the Initial Filing that the proposed requirement to include a tabulation of information provided to FINRA regarding customer complaints and internal investigations was not duplicative of existing requirements in FINRA Rule 4530, as each rule serves a distinct purpose. Whereas FINRA Rule 4530 requires reporting certain information to FINRA, the requirement in proposed FINRA Rule 3120 covers information required to be provided to a firm's senior management. To that end, however, firms may use the information reported to FINRA pursuant to FINRA Rule 4530, as well as other relevant information reported to FINRA pursuant to other regulatory requirements (e.g., investigation information reported to FINRA pursuant to proposed FINRA Rule 3110(d)), to prepare the tabulation required by proposed FINRA Rule 3120.

(3) Risk Management

As proposed in the Initial Filing, FINRA Rule 3120 would have required that a member meeting the applicable gross revenue threshold must include a discussion of the preceding year's compliance efforts in the area of risk management. At least one commenter suggested that FINRA eliminate this requirement since the term "risk management," as proposed, appears to encompass specific control functions for various types of risk (e.g., market, credit, liquidity, operational). The commenter asserted that, because there are no SEC or FINRA rules relating to "risk management" as there are with finance and operations, the compliance departments generally do not have programs to assess the performance of that function and supervisors so designated for purposes of FINRA rules are not therefore charged with supervision of compliance efforts in the area of risk management. Alternatively, the commenter suggested that FINRA acknowledge that "risk management" relates solely to "compliance risk," which would be covered by the firm's compliance department.[115] Another commenter also stated that the risk management topic appears to fall outside of the responsibilities of many compliance departments and requested that FINRA confirm whether chief compliance officers can rely on such items as certifications and representations from managers of areas not under the purview of, or routinely overseen by, the compliance department in completing and submitting the annual report.[116]

FINRA originally proposed the requirement for the purpose of providing senior management with a narrative specifically reflecting whether a member is effectively supervising and managing its business risks. However, in response to commenters' ongoing concerns regarding the role of compliance departments with respect to risk management activities, FINRA is eliminating risk management from the additional content requirements under proposed FINRA Rule 3120 and will consider whether to address separately members' risk management practices. Based on its examination and enforcement experience, FINRA has found that a strong risk management program mitigates a member's potential compliance problems.[117]

[111] *See also Regulatory Notice* 08–24 (noting that the supplemental information in Incorporated NYSE Rule 342.30's annual report was a valuable tool for the NYSE regulatory program and would also be valuable information for FINRA's regulatory program going forward).

[112] T. Rowe Price.

[113] CAI, FSI.

[114] CAI.

[115] SIFMA.

[116] NSCP.

[117] *See e.g., Regulatory Notice* 10–57 (November 2010) (guidance on developing and maintaining robust funding and liquidity risk management practices to prepare for adverse circumstances); *Notice to Members* 99–92 (November 1999) (SEC, NASD Regulation, and NYSE Issue Joint Statement on Broker/Dealer Risk Management Practices) (emphasizing the importance of maintaining an appropriate risk management system and providing examples of weaknesses and strengths in various broker-dealers' risk management policies and practices).

(m) Comments on Proposed FINRA Rule 3170

SIFMA requested that FINRA confirm whether it would continue to maintain and disseminate the "Disciplined Firms List" once new FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms), which replaces NASD Rule 3010(b)(2) (the "Taping Rule"), becomes effective. Currently, FINRA provides a "Disciplined Firms List" identifying those firms that meet NASD Rule 3010(b)(2)'s definition of "disciplined firm." This list assists members that are required to establish special supervisory procedures, including the tape recording of conversations, when they have hired more than a specified percentage of registered persons from firms that meet the Taping Rule's definition of "disciplined firm." FINRA intends to continue to maintain the list to assist members in meeting their supervisory obligations under FINRA Rule 3170.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2013–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–025. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2013–025 and should be submitted on or before July 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[118]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16231 Filed 7–5–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69900; File No. SR–EDGA–2013–18]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments To the EDGA Exchange, Inc. Fee Schedule

July 1, 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 June 26, 2013, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] and non-Members of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange maintains logical ports for order entry (FIX, HP–API), drop copies (DROP), EdgeRisk and market data (collectively, "Direct Logical Ports").[4] In SR–EDGA–2012–37, the Exchange reduced the number of free Direct Logical Ports from ten (10)

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[118] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer that has been admitted to membership in the Exchange.

[4] *See* Securities Exchange Act Release No. 69669 (May 30, 2013) 78 FR 33880 (June 5, 2013) (SR–EDGA–2013–14) (adding EdgeRisk ports to the list of logical ports offered by the Exchange); Securities and Exchange Act Release No. 64964 (July 26, 2011), 76 FR 45898 (August 1, 2011) (SR–EDGA–2011–22) (discussing the Exchange's proposal to include logical ports that receive market data among the types of logical ports that the Exchange assesses a monthly fee to Members and non-Members).

sessions to five (5) sessions.[5] The Exchange proposes to reduce the quantity of free Direct Logical Ports from five (5) sessions to two (2) sessions. The Exchange would assess a monthly fee per logical port for Members and non-Members that maintain three or more Direct Logical Ports. In addition, the Exchange, pursuant to an information circular dated June 4, 2013, communicated to Members and non-Members that the Exchange would propose these changes in a subsequent filing with the Securities and Exchange Commission.[6]

The Exchange further proposes to make a ministerial change to its fee schedule by changing the name of its HP–API logical ports from "HP–API" to "Edge XPRS (HP–API)."

The Exchange proposes to implement these amendments to its fee schedule on July 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as the proposed rule changes are designed to provide for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using the Exchange's facilities.

The Exchange believes its proposal to amend its fee schedule to reduce the quantity of free Direct Logical Ports from five sessions to two sessions represents an equitable allocation of reasonable dues, fees and other charges because the Exchange has recently implemented several infrastructure enhancements that optimized processing speed and capacity per port, thereby requiring fewer ports to communicate the same information. In addition, the proposal to reduce the number of logical ports from five to two will offset the costs of necessary hardware, infrastructure expenses, maintenance fees and staff support costs in operating a national securities exchange. The revenue generated from its proposal will also pay for the technical infrastructure and operating expenses of logical ports along with administrative and infrastructure costs associated with allowing Members and non-Members to establish logical ports to connect to the Exchange's systems. The Exchange also believes that reducing the quantity of free Direct Logical Ports from five to two sessions will promote efficient use of the ports by market participants, not only helping the Exchange to continue to maintain and improve its infrastructure, market technology, and services, but also encourage Members and non-Members to request and enable only the ports that are necessary for their operations related to the Exchange.

The Exchange believes that it is reasonable to reduce the number of free logical ports available to Members and non-Members because such practice is consistent with that of other exchanges, such as BATS Exchange, Inc., BATS Y-Exchange, Inc. and the NASDAQ Stock Exchange LLC.[9] Additionally, Members and non-Members may opt to disfavor the Exchange's pricing if they believe that alternative venues offer them better value. Accordingly, if the Exchange were to charge excessive fees, the Exchange would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

Lastly, the Exchange believes that the proposed reduction in quantity of free ports is non-discriminatory because it applies uniformly to Members and non-Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed amendment to its fee schedule represents a significant departure from previous Exchange fees or such fees offered by the Exchange's competitors.[10] Accordingly, the Exchange believes that reducing the quantity of free Direct Logical Ports from five sessions to two sessions would allow the Exchange to remain competitive with other market centers and thus would not burden intermarket competition.

The Exchange believes its proposal would not burden intramarket competition because the proposed rule change would apply uniformly to all Members and non-Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–EDGA–2013–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[5] *See* Securities and Exchange Act Release No. 67742 (August 28, 2012), 77 FR 53951 (September 4, 2012) (SR–EDGA–2012–37) (discussing the Exchange's proposal to reduce its number of free logical ports from ten (10) to five (5)).

[6] *See* Direct Edge Trading Notice #13–23: Logical Port Fee Changes Effective July 1, 2013, *http://www.directedge.com/About/Announcements/ViewNewsletterDetail.aspx?NewsletterID=1010*.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See* BATS, BATS BZX & BYX Exchange Fee Schedules, *http://batstrading.com/FeeSchedule/* (charging a monthly fee of $400 per logical port other than a Multicast PITCH Spin Server Port or GRP Port). *See also* NASDAQ, Price List-Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2* (charging a monthly fee of $500 per logical port pair for FIX/OUCH/RASHPort/DROP connectivity to NY-Metro and Mid-Atlantic Datacenters).

[10] *See* BATS, BATS BZX & BYX Exchange Fee Schedules, *http://batstrading.com/FeeSchedule/* (charging a monthly fee of $400 per logical port other than a Multicast PITCH Spin Server Port or GRP Port). *See also* NASDAQ, Price List-Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2* (charging a monthly fee of $500 per logical port pair for FIX/OUCH/RASHPort/DROP connectivity to NY-Metro and Mid-Atlantic Datacenters).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4 (f)(2).

All submissions should refer to File Number SR–EDGA–2013–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2013–18 and should be submitted on or before July 29,2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16227 Filed 7–5–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69898; File No. SR–NASDAQ–2013–093]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fees Under the QMM Pricing Incentive Program Under Rules 7014 and 7015

July 1, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4[2] thereunder, notice is hereby given that on June 26, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing changes to fees under its Qualified Market Maker ("QMM") pricing incentive program under Rules 7014 and 7015. NASDAQ proposes to implement the proposed rule change on July 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under NASDAQ's QMM Program, a member may be designated as a QMM with respect to one or more of its market participant identifiers ("MPIDs") if:

- the member is not assessed any "Excess Order Fee" under Rule 7018 during the month; [3] and
- through such MPID the member quotes at the national best bid or best offer ("NBBO") at least 25% of the time during regular market hours [4] in an average of at least 1,000 securities during the month.[5]

A member that is a QMM with respect to a particular MPID (a "QMM MPID") is eligible to receive certain discounts and credits. NASDAQ is now proposing to eliminate one of these discounts. At present, a QMM receives a discount on fees for ports used for entering orders for a QMM MPID, up to a total discount equal to the lesser of the QMM's total fees for such ports or $5,000.[6] As provided in Rule 7015, the specific fees subject to this discount are: (i) All ports using the NASDAQ Information Exchange ("QIX") protocol,[7] (ii) Financial Information Exchange ("FIX") trading ports,[8] and (iii) ports using other trading telecommunications protocols.[9] Beginning July 1, 2013, the port discount will be eliminated. All other discounts and credits associated with the QMM program will remain in effect.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Sections 6(b)(4), 6(b)(5), and 6(b)(8) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, and does not impose any burden on competition not necessary or

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 7018(m). Last year, NASDAQ introduced an Excess Order Fee, aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of NASDAQ and its members and that may negatively impact the usefulness and life cycle cost of market data. In general, the determination of whether to impose the fee on a particular MPID is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the NBBO, and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an "Order Entry Ratio" of more than 100.

[4] Defined as 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by NASDAQ on a day when the securities markets close early (such as the day after Thanksgiving).

[5] A member MPID is considered to be quoting at the NBBO if it has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, NASDAQ will determine the number of securities in which the member satisfied the 25% NBBO requirement. To qualify for QMM designation, the MPID must meet the requirement for an average of 1,000 securities per day over the course of the month. Thus, if a member MPID satisfied the 25% NBBO requirement in 900 securities for half the days in the month, and satisfied the requirement for 1,100 securities for the other days in the month, it would meet the requirement for an average of 1,000 securities.

[6] The ports subject to the discount are not used for receipt of market data.

[7] The applicable undiscounted fees are $1,200 per month for a port pair or ECN direct connection port pair, and $1,000 per month for an unsolicited message port. *See* Rule 7015(a).

[8] The applicable undiscounted fee is $500 per port per month. *See* Rule 7015(b).

[9] The applicable undiscounted fee is $500 per port pair per month. *See* Rule 7015(g).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4), (5) and (8).

appropriate in furtherance of the purposes of the Act.

The proposed change with respect to the QMM Program is reasonable because even with the change, QMMs will still continue to receive meaningful financial incentives consistent with the commitment to enhancing market quality that is reflected in their achievement of the program's quoting requirements. The proposed change is consistent with an equitable allocation of fees and is not unfairly discriminatory because it will cause the fees paid by QMMs with respect to order entry ports to be equivalent to the fees paid by other market participants for comparable access. Finally, the change does not impose any burden on competition that is not necessary or appropriate because although it will result in a fee increase for QMMs currently qualifying for the discount, it will also serve to return the applicable fees to the level in place before the introduction of the QMM program and make them equivalent to fees paid by other market participants for comparable access.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although the proposed change eliminates one of the discounts provided through a previously introduced pricing incentive program, the incentive program in question remain in place and is itself reflective of the need for exchanges to offer significant financial incentives to attract order flow in a highly competitive environment. Moreover, if the changes are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. Accordingly, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f) of Rule 19b–4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–093 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–093. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–093 and should be submitted on or before July 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16225 Filed 7–5–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69914; File No. SR–NYSE–2013–40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending 303A.00 of the Exchange's Listed Company Manual To Provide a One-Year Transition Period To Comply With the Internal Audit Requirement of Section 303A.07(c) for Companies Listing in Connection With An Initial Public Offering, as New Registrants or by Means of a Carve-Out or Spin-Off Transaction

July 2, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 18, 2013, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend 303A.00 of the Exchange's Listed Company Manual (the "Manual") to provide a one-year transition period to comply with the internal audit requirement of Section 303A.07(c) for companies listing in connection with an initial public offering ("IPO"), as new registrants or by means of a carve-out or spin-off transaction. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 303A.07(c) of the Listed Company Manual requires that any listed company which is subject to Section 303A.07 must have an internal audit function to provide management and the audit committee with ongoing assessments of the listed company's risk management processes and system of internal control. A listed company may choose to outsource this function to a third party service provider other than its independent auditor.

Consistent with the transition provisions of Section 303A.00, any company listing upon transfer from another national securities exchange that does not have an internal audit requirement has one year from the date of listing to comply with the internal audit function requirement of Section 303A.07(c). Neither the Nasdaq Stock Market LLC ("Nasdaq") nor NYSE MKT LLC ("NYSE MKT") has an internal audit requirement. Consequently, any company transferring from Nasdaq or NYSE MKT to the NYSE has one year from the date of listing to comply with the requirement specifically set forth in its rules. By contrast, Section 303A.00 does not provide any transition period for compliance with the internal audit requirement to a company which is listing in connection with: (i) Its IPO [4] or whose common stock has not previously been registered under the Exchange Act or (ii) by means of a carve-out or spin-off transaction.[5] The Exchange believes that the lack of a transition period in relation to the internal audit requirement for these categories of newly-listed companies is anomalous in light of the treatment of companies transferring from other markets. Accordingly, the Exchange proposes to amend Section 303A.00 to extend the application of the one-year transition period to comply with the internal audit function requirement to such companies.

The Exchange believes that providing a transition period to comply with the internal audit function requirement to companies listing in connection with their IPO, as new registrants or by mean of a carve-out or spin-off transaction does not give rise to any novel regulatory issues that do not arise in connection with the existing transition provision for companies transferring from another national securities exchange. The Exchange believes that providing a transitional period after listing for a newly public company to establish its internal audit function would benefit investors by making the company's implementation of the internal audit function more effective and efficient and reducing the costs that a company faces in its first year as a public company. The proposed transition period would also limit any interference by the Exchange's internal audit requirement with a company's business decision regarding the timing and use of resources relating to its initial listing. In that regard, the Exchange notes that newly-public companies are typically in the process of upgrading their accounting systems and internal controls and hiring additional staff to meet the greater demands placed on public companies. In addition, many such companies appoint a number of new directors at the time of listing to comply with NYSE independence requirements. Frequently, a newly-listed company will appoint a completely new audit committee on the date of listing. As the audit committee has an oversight role with respect to internal audit and risk management, it is appropriate for that newly-constituted committee to have a significant role in the design and implementation of the company's internal audit function. A one-year transition period would give a newly-appointed audit committee an opportunity to become familiar with the internal controls and risk management of the company and determine what kind of internal audit function is suitable for the company given its specific circumstances.

Given the limited scope of the proposed transition provision and the fact that other national securities exchanges do not have comparable rules, the Exchange believes that the extension of the transition provision to IPOs, new registrants, carve-outs and spin-offs is consistent with the protection of investors and the public interest. Moreover, given that any company which would be able to avail itself of the proposed transition could list on Nasdaq without ever having to comply with an internal audit requirement, the Exchange believes that investors would be at least as well protected by having these companies listed on the Exchange, where they would be subject to such a requirement after the transition period. After adoption of the proposed amendment, all companies that are subject to Section 303A.07 would continue to be required to have an internal audit function no later than one year after their listing

[4] For purposes of Section 303A other than Sections 303A.06 (which incorporates Exchange Act Rule 10A–3 by reference) and 303A.12(b), Section 303A.00 currently provides that a company is considered to be listing in conjunction with an IPO if, immediately prior to listing, it does not have a class of common stock registered under the Exchange Act. Consequently [sic], a company whose common stock has not previously been registered under the Exchange Act is eligible to avail itself of the IPO transition periods in Section 303A.00 regardless of whether that company is conducting a public offering at the time of its initial listing. The Exchange's proposed amendment would provide a one-year transition period for compliance with the internal audit function requirement to all companies currently eligible for the IPO transition periods in Section 303A.00.

[5] Section 102.01B of the Manual defines a carve-out as the initial offering of an equity security to the public by a publicly traded company for an underlying interest in its existing business (which may be subsidiary, division, or business unit). For all practical purposes, a carve-out is the same as an IPO, as it involves the listing of a newly-public company in connection with the initial public offering of its common stock. A spin-off involves the distribution by a listed company of all of the outstanding common stock of a subsidiary to the listed company's shareholders and the listing of the new company, generally without any concurrent offering.

date. The Exchange proposes to amend Section 303A.07 to include a sentence explicitly stating this fact.

The Exchange notes that there are several provisions in Section 303A.07 that set forth duties of the audit committee with respect to the internal audit function. The Exchange proposes to amend those provisions to clarify the duties of the audit committee with respect to the internal audit function during any transition period applicable to IPOs, new registrants, transfers from another national securities exchange, carve-outs and spin-offs. The proposed amendments are as follows:

• Section 303A.07(b)(i)(A) provides that the audit committee's charter must provide that the committee will assist board oversight of (1) the integrity of the listed company's financial statements, (2) the listed company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence, and (4) the performance of the listed company's internal audit function and independent auditors. The proposed amendment would provide that if the listed company does not yet have an internal audit function because it is availing itself of a transition period pursuant to Section 303A.00, the charter must provide that the committee will assist board oversight of the design and implementation of the internal audit function) [sic].

• Section 303A.07(b)(i)(E) provides that the audit committee's charter must provide that the committee will meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors. The proposed amendment would provide that if the listed company does not yet have an internal audit function because it is availing itself of a transition period pursuant to Section 303A.00, the committee must meet periodically with the company personnel primarily responsible for the design and implementation of the internal audit function.

• Section 303A.07(b)(i)(F) provides that the audit committee's charter must provide that the committee will review with the independent auditor any audit problems or difficulties and management's response. This review is required to include discussion of the responsibilities, budget and staffing of the listed company's internal audit function. The proposed amendment would provide that if the listed company does not yet have an internal audit function because it is availing itself of a transition period pursuant to Section 303A.00, the review should include discussion of management's plans with respect to the responsibilities, budget and staffing of the internal audit function and its plans for the implementation of the internal audit function.

• Section 303A.07(b)(i)(H) provides that the audit committee's charter must provide that the committee will report regularly to the board of directors to review, among other things, the performance of the company's internal audit function. The proposed amendment would provide that if the listed company does not yet have an internal audit function because it is availing itself of a transition period pursuant to Section 303A.00, the committee should review with the board management's activities with respect to the design and implementation of the internal audit function.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) of the Act in that the proposed amendment would provide an appropriate transition period to comply with the internal audit requirement to companies listing in connection with an IPO, as a new registrant, or by means of a carve-out or spin-off transaction, while retaining its general requirement that all such companies must have an internal audit function no later than one year from the company's listing date. The Exchange notes that during any transition period the audit committee would continue to have a role in overseeing the listed company's financial systems and internal controls and would also be involved in overseeing the design and implementation of the company's internal audit function during that period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act, as it simply provides a transition period for newly-listed companies to comply with the Exchange's internal audit requirement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2013–40 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–40. This file number should be included on the subject line if email is used.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–40, and should be submitted on or before July 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16289 Filed 7–5–13; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13641]

Washington Disaster # WA–00038 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Washington, dated 06/27/2013.

Incident: Interstate 5 Bridge Collapse.

Incident Period: 05/23/2013.

Effective Date: 06/27/2013.

EIDL Loan Application Deadline Date: 03/27/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

[8] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Skagit.

Contiguous Counties:

Washington: Chelan; Island; Okanogan; Snohomish; Whatcom.

The Interest Rates are:

	Percent
Businesses and small agricultural cooperatives without credit available elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for economic injury is 136410.

The State which received an EIDL Declaration # is Washington.

(Catalog of Federal Domestic Assistance Number 59002)

Dated:June 27, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–16219 Filed 7–5–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13586 and #13587]

Oklahoma Disaster Number OK–00071

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA—4117–DR), dated 05/20/2013.

Incident: Severe storms, tornadoes and flooding.

Incident Period: 05/18/2013 through 06/02/2013.

Effective Date: 06/26/2013.

Physical Loan Application Deadline Date: 07/19/2013.

EIDL Loan Application Deadline Date: 02/20/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Oklahoma, dated 05/20/2013 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Okfuskee Okmulgee Le Flore

Contiguous Counties: (Economic Injury Loans Only):

Oklahoma: Haskell Hughes Latimer Mccurtain Mcintosh Muskogee Pushmataha Sequoyah Tulsa Wagoner

Arkansas: Polk Scott Sebastian

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–16221 Filed 7–5–13; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401

Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than August 7, 2013. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Program Discrimination Complaint—0960–0585. SSA collects information on Form SSA–437 to investigate and formally resolve complaints of discrimination based on disability, race, color, national-origin (including limited English language proficiency), sex (including sexual orientation and gender identity), age, religion, or retaliation for having participated in a proceeding under this administrative complaint process in connection with an SSA program or activity. Individuals who believe SSA discriminated against them on any of the above bases may file a written complaint of discrimination. SSA uses the information to (1) identify the complaint; (2) identify the alleged discriminatory act; (3) establish the date of such alleged action; (4) establish the identity of any individual(s) with information about the alleged discrimination; and (5) establish other relevant information that would assist in the investigation and resolution of the complaint. Respondents are individuals who believe an SSA program or activity, or SSA employees, contractors or agents discriminated against them.

TYPE OF REQUEST: REVISION OF AN OMB-APPROVED INFORMATION COLLECTION

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–437	255	1	60	255

2. Work Incentives Planning and Assistance Program—0960–0629. As part of SSA's strategy to assist Social Security Disability Insurance (SSDI) beneficiaries and Supplemental Security Income (SSI) recipients who wish to return to work and achieve self-sufficiency, SSA established the Work Incentives Planning and Assistance (WIPA) program. This community-based, work incentive, planning and assistance project collects identifying claimant information via project sites and community work incentives coordinators (CWIC). SSA uses this information to ensure proper management of the project, with particular emphasis on administration, budgeting, and training. In addition, project sites and CWICs collect data from SSDI beneficiaries and SSI recipients on background employment, training, benefits, and work incentives. SSA is interested in identifying SSDI beneficiary and SSI recipient outcomes under the WIPA program to determine the extent to which beneficiaries with disabilities and SSI recipients achieve their employment, financial, and health-care goals. SSA will also use the data in its analysis and future planning for SSDI and SSI programs. Respondents are SSDI beneficiaries, SSI recipients, community project sites, and employment advisors.

TYPE OF REQUEST: REVISION OF AN OMB-APPROVED INFORMATION COLLECTION

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSDI Beneficiaries and SSI Recipients	40,000	1	30	20,000
Project Sites	96	1	15	24
CWICs	400	1	20	134
Totals	40,496			20,158

Dated: July 2, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–16245 Filed 7–5–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8374]

60-Day Notice of Proposed Information Collection: Exchange Programs Alumni Web Site Registration

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *September 6, 2013.*

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering "Public

Notice 8374" in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.

- *Email: suhch@state.gov*
- *Mail:* Bureau of Educational and Cultural Affairs; U.S. Department of State; SA–5, Room C2–C20; Washington, DC 20522–0503

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Chang Suh, Alumni Outreach Specialist, Bureau of Educational and Cultural Affairs; U.S. Department of State; SA–5, Room C2–C20; Washington, DC 20522–0503, who may be reached on 202–632–6183 or at *SuhCH@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Exchange Programs Alumni Web site Registration
- *OMB Control Number:* 1405–0192
- *Type of Request:* Extension of an Approved Request
- *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/P/A
- *Form Number:* DS–7006
- *Respondents:* Exchange program alumni and current participants of U.S. government-sponsored exchange programs
- *Estimated Number of Respondents:* 20,000
- *Estimated Number of Responses:* 20,000
- *Average Time Per Response:* 10 minutes
- *Total Estimated Burden Time:* 3,333 hours
- *Frequency:* One time per respondent
- *Obligation to Respond:* Required to Obtain or Retain a Benefit

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

The International Exchange Alumni Web site requires information to process users' voluntary request for participation in the International Exchange Alumni Web site. Other than contact exchange program information, which is required for Web site registration, all other information is provided on a voluntary basis. Participants also have the option of restricting access to their information.

Respondents to this registration form are U.S. government-sponsored exchange program participants and alumni. Alumni Affairs collects data from users to not only verify their status or participation in a program, but to help alumni network with one another and aid embassy staff in their alumni outreach.

Methodology:

Information provided for registration is collected electronically via the Alumni Web site, *alumni.state.gov.*

Additional Information:

International Exchange Alumni is a secure, encrypted Web site.

Dated: July 1, 2013.

Tania Chomiak-Salvi,

Director, Office of Policy and Evaluation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–16335 Filed 7–5–13; 8:45 am]

BILLING CODE 4701–05–P

DEPARTMENT OF STATE

[Public Notice 8373]

Bureau of Western Hemisphere Affairs, Executive Order 11423, as Amended; Notice of Receipt of Application for an Amendment to a Presidential Permit To Allow the Crossing of Non-Radioactive Hazardous Materials Across the World Trade Bridge in the City of Laredo, Texas

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State hereby gives notice that it has received an application for an amendment to the existing Presidential permit to allow the crossing of non-hazardous radioactive materials (HAZMAT) across the World Trade Bridge between the City of Laredo, Texas and Nuevo Laredo, Tamaulipas, Mexico. This application has been filed by the City of Laredo, the original permittee for the World Trade Bridge. A Presidential permit for the World Trade Bridge crossing was issued by the Department of State on October 7, 1994.

The Department of State's jurisdiction with respect to this application is based upon the International Bridge Act of 1972, 33 U.S.C. 535 *et seq.*, and Executive Order 11423, dated August 16, 1968, as amended. The Department of State has determined that, under Executive Order 11423, an amended Presidential permit is required to allow the transit of HAZMATs as this constitutes a substantial change to the operations of the crossing as authorized by the existing Presidential permit.

As provided in E.O. 11423, the Department is circulating the City of Laredo's application, along with the EA, to concerned agencies for comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account input from these agencies and other stakeholders, whether issuance of an amendment to the Presidential Permit would serve the national interest.

Interested members of the public are invited to submit written comments regarding this application on or before August 7, 2013 to *MexicoCrossingComm@State.gov* or to Peter Marigliano, Border Affairs Officer, WHA/MEX, HST Room 1329A, Department of State, 2201 C St. NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Peter Marigliano, Border Affairs Officer, WHA/MEX, HST Room 1329A, Department of State, 2201 C St. NW., Washington, DC 20520. Telephone: (202) 647–9895, email: *WHA-BorderAffairs@state.gov.*

SUPPLEMENTARY INFORMATION: The application and related documents are available for review in the Office of Mexican Affairs, Border Affairs Unit, Department of State, during normal business hours throughout the comment period. Any questions related to this notice may be addressed to Mr. Marigliano using the contact information above.

Dated: June 27, 2013.

Hugo F. Rodriguez,

Acting Director, Office of Mexican Affairs, Department of State.

[FR Doc. 2013–16333 Filed 7–5–13; 8:45 am]

BILLING CODE 4710–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Results of the 2012 Annual GSP Review; Notice of a Country Practice Petition Accepted as Part of the 2012 Annual GSP Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces the results of the 2012 Annual GSP Review with respect to: (1) Products considered for addition to the list of eligible products for GSP; (2) decisions related to competitive need limitations (CNLs), including petitions for waivers of CNLs and revocation of previous CNL waivers; (3) redesignations of products previously excluded from GSP eligibility for certain countries; and (4) petitions to modify the GSP status of certain GSP beneficiary countries because of country practices.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508. The telephone number is (202) 395–6971; the fax number is (202) 395–9674, and the email address is *Tameka_Cooper@ustr.eop.gov*.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free treatment of designated articles when imported from beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*), as amended.

Results of the 2012 Annual GSP Review

In the 2012 Annual Review, the Trade Policy Staff Committee (TPSC) reviewed: (1) Petitions to add four different products to the list of those eligible for duty-free treatment under GSP; (2) one petition to waive CNLs for a product from a beneficiary country; (3) revocation of a CNL waiver for a product from a beneficiary country where 2012 imports exceeded certain statutory limits; (4) products eligible for *de minimis* waivers of CNLs; (5) redesignation of products previously excluded from GSP eligibility for certain beneficiary countries; and 6) one country practice petition submitted as part of the 2012 Annual Review and several active petitions submitted as part of earlier reviews.

In a Presidential Proclamation dated June 27, 2013, the President implemented his decisions regarding GSP product eligibility issues arising out of the 2012 Annual GSP Review, including CNL waivers and CNL revocations. This notice provides further information on the results of the 2012 Annual GSP Review, including the disposition of country practice petitions. These results, comprising seven lists, are available for the public to view at *http://www.regulations.gov* in docket USTR–2012–0013, under "Supporting and Related Materials" and at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preferences-gsp/current-review*.

Specific Results

The Administration has decided to defer a decision on the final disposition of petitions to add the following products to the list of products eligible for duty-free treatment under GSP for all GSP beneficiary countries: Sweetheart and spray roses (HTS 0603.11.00), certain frozen vegetables (HTS 0710.80.97), and certain preserved artichokes (HTS 2005.99.80). The Administration denied the petition to make certain refined copper wire (HTS 7408.19.00.30) eligible for duty-free treatment under the GSP. See List I (Decisions on Petitions to Add Products to the List of Eligible Products for GSP).

The President granted a petition for a waiver of CNLs for calcium silicon ferroalloys (HTS 7202.99.20) from Brazil. See List II (Decision on Petition to Grant a Waiver of the Competitive Need Limitations). Additionally, the President revoked an existing CNL waiver for certain pneumatic radial tires (HTS 4011.10.10) from Indonesia, as reflected in List III (Decision on Competitive Need Limitation Waiver Revocations).

Effective July 1, 2013, imports of an article, certain corn (HTS 1005.90.40), from Brazil are excluded from GSP eligibility because imports of that article from Brazil exceeded the CNL in 2012. See List IV (Product Newly Subject to Exclusion by Competitive Need Limitation).

The President granted *de minimis* waivers to 100 articles that exceeded the 50-percent import-share CNL, but for which the aggregate value of all U.S. imports of that article was below the 2012 *de minimis* level of $21 million. See List V (Decisions on Products Eligible for *De Minimis* Waivers). The articles for which *de minimis* waivers were granted will continue to be eligible for duty-free treatment under GSP when imported from the associated countries.

No products previously excluded from GSP eligibility for certain countries were redesignated as eligible for GSP as a result of the 2012 Annual Review. See List VI (Decisions on Products Eligible for Redesignation).

Country Practice Petitions

The status of country practice petitions considered in the 2012 GSP Annual Review is described in List VII (Active and Pending GSP Country Practice Reviews). This list includes petitions accepted as part of annual reviews from previous years.

The USTR has accepted for review one country practice petition submitted as part of the 2012 GSP Annual Review: A petition seeking to withdraw or suspend GSP benefits for Ecuador on the basis of Ecuador's alleged failure to meet the GSP statutory eligibility criterion regarding recognition and enforcement of arbitral awards (19 U.S.C. 2462(b)(2)(E)). The GSP Subcommittee's review of this petition will consider whether the withdrawal or suspension of GSP benefits is warranted in light of the type, nature, and content of the awards at issue, as well as whether Ecuador's actions in response to the awards comply with the cited eligibility criterion. The review will not consider the details or merits of either the Ecuadorian domestic litigation underlying the ongoing arbitral proceedings or the arbitral proceedings themselves. A subsequent notice published in the **Federal Register** will announce the schedule for a hearing and receipt of public comments, including related filing deadlines, on this newly accepted country practice case.

As determined in the previously-cited Presidential Proclamation dated June 27, 2013, the President has suspended Bangladesh's benefits under the GSP. This suspension will be effective 60 days after the date the proclamation is published in the **Federal Register**.

Country practice petitions accepted for review in previous years that continue to be under review include: Indonesia, Russia, Ukraine, and Uzbekistan regarding intellectual property rights, and Fiji, Georgia, Iraq, Niger, the Philippines, and Uzbekistan regarding worker rights.

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences and Chair of the GSP Subcommittee of the Trade Policy Staff Committee, Office of the U.S. Trade Representative.

[FR Doc. 2013–16201 Filed 7–5–13; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2013–0176]

Reports, Forms, and Record Keeping Requirements

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

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budge (OMB) for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information was published on January 28, 2013 (**Federal Register**/Vol. 78, No. 18/pp. 5866–5867).

DATES: Submit comments to the Office of Management and Budget (OMB) on or before August 7, 2013.

FOR FURTHER INFORMATION CONTACT: Carla Rush at the National Highway Traffic Safety Administration, Office of Crashworthiness Standards, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Mrs. Rush's phone number is (202) 366–4583 and her email address is *carla.rush@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: To be issued at time of approval.

Title: National Survey of Principal Drivers of Vehicles with a Rear Seat Belt Reminder System

Type of Request: New collection.

Abstract: NHTSA seeks to collect data from those who drive vehicles equipped with a Rear Seat Belt Reminder System (SBRS), which are currently available on only a few vehicle models sold in the U.S., the test group, and draw comparisons to those who drive similar vehicles without a rear SBRS (the comparison group). To this end, NHTSA will collect basic demographic information from both groups and information on their passengers seat belt usage habits, as well as the effectiveness, preferences and acceptance of the rear SBRS. NHTSA will use the findings from this proposed collection of information in support of an analysis of the potential benefits of requiring a rear SBRS in new vehicles sold in the United States.

In conducting the proposed telephone interviews, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. No personally identifiable information will be collected during the telephone interviews. NHTSA has decided not to use a Spanish-language translation or bilingual interviewers based on the prevalence of the use of English in the United States.

Respondents: Telephone interviews will be administered to a national sample of people 18 and older who are primary drivers of vehicles with a specific make and model.

Estimated Number of Respondents: 2,500 survey respondents.

Estimated Time per Response: 15 minutes per interview.

Total Estimated Annual Burden: 625 hours.

Frequency of Collection: The survey will be administered a single time.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, or by email at *oira_submission@omb.eop.gov,* or fax: 202–395–5806.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Issued on: June 27, 2013.

Lori K. Summers,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2013–16268 Filed 7–5–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 526 (Sub-No. 5)]

Notice of Railroad-Shipper Transportation Advisory Council Vacancy

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of vacancies on the Railroad-Shipper Transportation Advisory Council (RSTAC) and solicitation of nominations.

SUMMARY: The Board hereby gives notice of two vacancies on RSTAC. One is for a large shipper representative, and the other is for an at-large (public interest) representative. The Board is soliciting suggestions for candidates to fill these two vacancies.

DATES: Suggestions of candidates for membership on RSTAC are due on July 31, 2013.

ADDRESSES: Suggestions may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 526 (Sub-No. 5), 395 E Street SW., Washington, DC 20423–0001 (if sending via express company or private courier, please use zip code 20024). Please note that submissions will be available to the public at the Board's offices and posted on the Board's Web site under Docket No. EP 526 (Sub-No. 5).

FOR FURTHER INFORMATION CONTACT: Gabriel Meyer at 202–245–0150. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board, created in 1996 to take over many of the functions previously performed by the Interstate Commerce Commission, exercises broad authority over transportation by rail carriers, including regulation of railroad rates and service (49 U.S.C. 10701–10747, 11101–11124), as well as the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901–10907) and railroad line sales, consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323–11327).

RSTAC was established upon the enactment of the ICC Termination Act of 1995 (ICCTA), on December 29, 1995, to advise the Board's Chairman, the Secretary of Transportation, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives with respect to rail transportation policy issues RSTAC considers significant. RSTAC focuses on issues of importance to small shippers and small railroads, including car supply, rates, competition, and procedures for addressing claims. ICCTA directs RSTAC to develop private-sector mechanisms to prevent, or identify and address, obstacles to the most effective and efficient transportation system practicable. The Secretary of Transportation and the members of the Board cooperate with RSTAC in providing research, technical, and other reasonable support. RSTAC also prepares an annual report concerning its activities and recommendations on whatever regulatory or legislative relief it considers appropriate. RSTAC is not subject to the Federal Advisory Committee Act.

RSTAC consists of 19 members. Of this number, 15 members are appointed by the Chairman of the Board, and the remaining four members are comprised of the Secretary of Transportation and the Members of the Board, who serve as *ex officio*, nonvoting members. Of the 15 members, nine members are voting members and are appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries. At least four of the voting members must be representatives of small shippers as determined by the Chairman, and at least four of the voting members must be representatives of Class II or III railroads. The remaining six members to be appointed—three representing Class I railroads and three representing large shipper organizations—serve in a nonvoting, advisory capacity, but are entitled to participate in RSTAC deliberations.

RSTAC is required by statute to meet at least semi-annually. In recent years, RSTAC has chosen to meet four times a year, with the first meeting each February. Meetings are generally held at the Board's headquarters in Washington, DC, although some may be held in other locations.

RSTAC members receive no compensation for their services and are required to provide for the expenses incidental to their service, including travel expenses, as the Board cannot provide for these expenses. The RSTAC Chairman, however, may request funding from the Department of Transportation to cover travel expenses, subject to certain restrictions in ICCTA. RSTAC also may solicit and use private funding for its activities, again subject to certain restrictions in ICCTA. RSTAC members currently have elected to submit annual dues to pay for RSTAC expenses.

RSTAC members must be citizens of the United States and represent as broadly as practicable the various segments of the railroad and rail shipper industries. They may not be full-time employees of the United States. Further, RSTAC members appointed or reappointed after June 18, 2010, are prohibited from serving as federally registered lobbyists during their RSTAC term.

The members of RSTAC are appointed for a term of three years. A member may serve after the expiration of his or her term until a successor has taken office. No member will be eligible to serve in excess of two consecutive terms.

Due to the unanticipated resignation of RSTAC members, two vacancies currently exist. One is for a large shipper representative, and the other is for an at-large (public interest) representative. Upon appointment by the Chairman, both representatives will serve for three years, and may be eligible to serve a second three-year term following the end of their first term.

Suggestions for candidates to fill the two vacancies should be submitted in letter form, identify the name of the candidate, provide a summary of why the candidate is qualified to serve on RSTAC, and contain a representation that the candidate is willing to serve as a member of RSTAC effective immediately upon appointment. RSTAC candidate suggestions should be filed with the Board by July 31, 2013. Members selected to serve on RSTAC are chosen at the discretion of the Board's Chairman. Please note that submissions will be available to the public at the Board's offices and posted on the Board's Web site under Docket No. EP 526 (Sub-No. 5).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 726.

Decided: July 1, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2013–16224 Filed 7–5–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8038–TC

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 Form 8038–TC, Information Return for Tax Credit Bonds.

DATES: Written comments should be received on or before September 6, 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 notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return for Tax Credit Bonds.

OMB Number: 1545–2160.

Notice Number: Form 8038–TC.

Abstract: Form 8038–TC will be used by issuers of qualified tax-exempt credit bonds, including tax credit bonds enacted under American Recovery and Reinvestment Act of 2009, to capture information required by IRC section 149(e) using a schedule approach. For applicable types of bond issues, filers will this form instead of Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Not for profit institutions.

Estimated Number of Respondents: 540.

Estimated Average Time per Respondent: 28 hrs., 44 min.

Estimated Total Annual Burden Hours: 15,520 hrs.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16205 Filed 7–5–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–15

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 2004–15, Waivers of Minimum Funding Standards.

DATES: Written comments should be received on or before September 6, 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 revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Waivers of Minimum Funding Standards.

OMB Number: 1545–1873.

Revenue Procedure Number: Revenue Procedure 2004–15.

Abstract: Revenue Procedure 2004–15 describes the process for obtaining a waiver from the minimum funding standards set forth in section 412 of the Code.

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 not-for-profit institutions, farms and state, local or tribal governments.

Estimated Number of Respondents: 55.

Estimated Annual Average Time per Respondent: 172 hours.

Estimated Total Annual Hours: 9,460 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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16197 Filed 7–5–13; 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 procedural rules for excise taxes currently reportable on Form 720.

DATES: Written comments should be received on or before September 6, 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 Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Procedural Rules for Excise Taxes Currently Reportable on Form 720.

OMB Number: 1545–1296.

Regulation Project Number: PS–27–91.

Abstract: Internal Revenue Code section 6302(c) authorizes the use of Government depositaries for the receipt of taxes imposed under the internal revenue laws. These regulations provide reporting and recordkeeping requirements related to return, payments, and deposits of tax for excise taxes currently reportable on Form 720.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10,500.

Estimated Time per Respondent: 14 minutes.

Estimated Total Annual Burden: 242,350.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16186 Filed 7–5–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006–54

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 2006–54, Procedures for Requesting Competent Authority Assistance Under Tax Treaties.

DATES: Written comments should be received on or before September 6, 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 revenue procedures should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Procedures for Requesting Competent Authority Assistance Under Tax Treaties.

OMB Number: 1545–2044.

Revenue Procedure Number: Rev. Proc. 2006–54.

Abstract: Taxpayers who believe that the actions of the United States, a treaty country, or both, result or will result in taxation that is contrary to the provisions of an applicable tax treaty are required to submit the requested information in order to receive assistance from the IRS official acting as the U.S. competent authority. The information is used to assist the taxpayer in reaching a mutual agreement with the IRS and the appropriate foreign competent authority.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 30 hours.

Estimated Total Annual Burden Hours: 9,000.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16202 Filed 7–5–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006–50

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 2006–50, Expenses Paid by Certain Whaling Captains in Support of Native Alaskan Subsistence Whaling.

DATES: Written comments should be received on or before September 6, 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 revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Expenses Paid by Certain Whaling Captains in Support of Native Alaskan Subsistence Whaling.

OMB Number: 1545–2041.

Revenue Procedure Number: Revenue Procedure 2006–50.

Abstract: This revenue procedure provides the procedures under which the whaling expenses of an individual recognized by the Alaska Eskimo Whaling Commission (AEWC) as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities are substantiated for purposes of Internal Revenue Code § 170(n), as enacted by the American Jobs Creation Act of 2004 and effective for whaling expenses incurred after December 31, 2004. Pub. L. No. 109–357, § 335.

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.

Estimated Number of Respondents: 24.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 48.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16198 Filed 7–5–13; 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 registration requirements with respect to certain debt obligations; application of repeal of 30 percent withholding by the tax reform act of 1984.

DATES: Written comments should be received on or before September 6, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Registration Requirements With Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984.

OMB Number: 1545–1132.

Regulation Project Number: INTL–536–89.

Abstract: Sections 165(j) and 1287(a) of the Internal Revenue Code provide that persons holding registration-required obligations in bearer form are subject to certain penalties. These sections also provide that certain persons may be exempted from these penalties if they comply with reporting requirements with respect to ownership, transfers, and payments on the obligations. The reporting and recordkeeping requirements in this regulation are necessary to ensure that persons holding registration-required obligations in bearer form properly report interest and gain on disposition of the obligations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/ Recordkeepers: 5000.

Estimated Time per Respondent/ Recordkeeper: 10 minutes.

Estimated Total Annual Reporting/ Recordkeeping Hours: 850.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16200 Filed 7–5–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–107

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 2006–107, Diversification Requirements for Qualified Defined Contribution Plans Holding Publicly Traded Employer Securities.

DATES: Written comments should be received on or before September 6, 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 revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Diversification Requirements for Qualified Defined Contribution Plans Holding Publicly Traded Employer Securities.

OMB Number: 1545–2049.

Revenue Procedure Number: Notice 2006–107.

Abstract: This notice provides transitional guidance on § 401(a)(35) of the Internal Revenue Code, added by section 901 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (PPA '06), which provides diversification rights with respect to publicly traded employer securities held by a defined contribution plan. This notice also states that Treasury and the Service expect to issue regulations under § 401(a)(35) that incorporate the transitional relief in this notice and requests comments on the transitional guidance in this notice and on the topics that need to be addressed in the regulations.

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 and other for-profit.

Estimated Number of Respondents: 10,300.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 7,725.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16203 Filed 7–5–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection: Comment Request for Form 8875

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 Form 8875, Taxable REIT Subsidiary Election.

DATES: Written comments should be received on or before September 6, 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 Allan Hopkins, (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or

through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxable REIT Subsidiary Election.

OMB Number: 1545–1721.

Form Number: 8875.

Abstract: A corporation and a REIT use Form 8875 to jointly elect to have the corporation treated as a taxable REIT subsidiary as provided in section 856(l).

Current Actions: There are no changes being made to the form at this time.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 7 hr., 40 min.

Estimated Total Annual Burden Hours: 7,660.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16216 Filed 7–5–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720–CS

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 Form 720–CS, Carrier Summary Report.

DATES: Written comments should be received on or before September 6, 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 Allan Hopkins at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Carrier Summary Report.

OMB Number: 1545–1733.

Form Number: 720–CS.

Abstract: Representatives of the motor fuel industry, state governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effort has resulted in a system to track the movement of all products to and from terminals. Form 720–CS is an information return that will be used by carriers to report their monthly deliveries and receipts of products to and from terminals.

Current Actions: There is no change to Form 720–CS at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 39,900.

Estimated Time per Respondent: 5 hours, 15 minutes.

Estimated Total Annual Burden Hours: 209,418.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16212 Filed 7–5–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8868

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 Form 8868, Application for Extension of Time To File an Exempt Organization Return.

DATES: Written comments should be received on or September 6, 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 Allan Hopkins, (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File an Exempt Organization Return.

OMB Number: 1545–1709.

Form Number: 8868.

Abstract: Sections 6081 and 1.6081 of the Internal Revenue Code and regulations permit the Internal Revenue Service to grant a reasonable extension of time to file a return. Form 8868 provides the necessary information for a taxpayer to apply for an extension to file a fiduciary or certain exempt organization return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a previously approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 248,932.

Estimated Time per Respondent: 10 hrs., 24 mins.

Estimated Total Annual Burden Hours: 1,291,498.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16195 Filed 7–5–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8316

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 Form 8316, Information Regarding Request for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa.

DATES: Written comments should be received on or before September 6, 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 should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665 or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Information Regarding Request for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa.

OMB Number: 1545–1862.

Form Number: 8316.

Abstract: Certain foreign students and other nonresident visitors are exempt from FICA tax for services performed as specified in the Immigration and Naturalization Act. Applicants for refund of this FICA tax withheld by their employer must complete Form 8316 to verify that they are entitled to a refund of the FICA, that the employer has not paid back any part of the tax withheld and that the taxpayer has attempted to secure a refund from his/her employer.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 22,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 5,500.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16213 Filed 7–5–13; 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 zone academy bonds: Obligations of states and political subdivision.

DATES: Written comments should be received on or before September 6, 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 Allan Hopkins, (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Zone Academy Bonds: Obligations of States and Political Subdivision.

OMB Number: 1545–1908.

Regulation Number: Regulation 121475–03 (T.D. 9339).

Abstract: The agency needs the information to ensure compliance with the requirement under the regulation that the taxpayer rebates the earnings on the defeasance escrow to the United States. The agency will use the notice to ensure that the respondent pays rebate when rebate becomes due. The respondent are state and local governments that issue qualified zone academy bonds under § 1397E of the IRC.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 6.

Estimated Average Time per Respondent: 30 minutes.

Estimated Total Annual Reporting Hours: 3.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16199 Filed 7–5–13; 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 allocation and sourcing of income and deductions among taxpayers engaged in a global dealing operation.

DATES: Written comments should be received on or before September 6, 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 Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation and Sourcing of Income and Deductions Among Taxpayers Engaged in a Global Dealing Operation.

OMB Number: 1545–1599.

Regulation Project Number: REG–208299–90.

Abstract: This regulation provides rules for the allocation among controlled taxpayers and sourcing of income, deductions, gains and losses from a global dealing operation. The information requested in §§ 1.475(g)–2(b), 1.482–8(b)(3), (c)(3), (e)(3), (e)(5), (e)(6), (d)(3), and 1.863–3(h) is necessary for the Service we determine whether the taxpayer has entered into controlled transactions at an arm's length price.

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: 500.

Estimated Time per Respondent: 40 hours.

Estimate Total Annual Burden Hours: 20,000.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16210 Filed 7–5–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098–T

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 Form 1098–T, Tuition Payment Statement.

DATES: Written comments should be received on or before September 6, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Larence, 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 Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tuition Payments Statement.

OMB Number: 1545–1574.

Form Number: Form 1098–T.

Abstract: Section 6050S of the Internal Revenue Code requires eligible education institutions to report certain information to the IRS and to students. Form 1098–T has been developed to meet this requirement.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Responses: 21,078,651.

Estimated Time per Response: 13 minutes.

Estimated Total Annual Burden Hours: 4,848,090.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16194 Filed 7–5–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Qualified Retirement Plans Under Sections 401(k) and 401(m) and Guidance on Cash or Deferred Arrangements

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 guidance on cash or deferred arrangements.

DATES: Written comments should be received on or before September 6, 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 Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or

through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: REG–108639–99 (NPRM) Sections 401(k) and 401(m); Notice 2000–3 Guidance on Cash or Deferred Arrangements.

OMB Number: 1545–1669.

Regulation/Notice Number: REG–108639–99/Notice 2000–3.

Abstract: The final regulations provide guidance for qualified retirement plans containing cash or deferred arrangements under section 401(k) and providing matching contributions or employee contributions under section 401(m). The IRS needs this information to insure compliance with sections 401(k) and 401(m).

Current Actions: There are no changes being made to this regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government.

Estimated Number of Respondents: 22,500.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 26,500.

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: June 17, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16211 Filed 7–5–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 414

Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 414

[CMS–1526–P]

RIN 0938–AR55

Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to update and make revisions to the End-Stage Renal Disease (ESRD) prospective payment system (PPS) for calendar year (CY) 2014. This rule also proposes to set forth requirements for the ESRD quality incentive program (QIP), including for payment year (PY) 2016 and beyond. In addition, this rule proposes to clarify the grandfathering provision related to the 3-year minimum lifetime requirement (MLR) for Durable Medical Equipment (DME). In addition, it provides clarification of the definition of routinely purchased DME. This rule also proposes the implementation of budget-neutral fee schedules for splints and casts, and intraocular lenses (IOLs) inserted in a physician's office. Finally, this rule would make a few technical amendments and corrections to existing regulations related to payment for DMEPOS items and services.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. E.S.T on August 30, 2013.

ADDRESSES: In commenting, please refer to file code CMS–1526–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1526–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1526–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Michelle Cruse, (410) 786–7540, for issues related to the ESRD PPS.

Stephanie Frilling, (410) 786–4507, for issues related to the ESRD PPS wage index, home dialysis training, and the delay in payment for oral-only drugs under the ESRD PPS.

Heidi Oumarou, (410) 786–7942, for issues related to the ESRD market basket.

Anita Segar, (410) 786–4614, for issues related to the ESRD QIP.

Sandhya Gilkerson, (410) 786–4085, for issues related to the clarification of the grandfathering provision related to the 3-year MLR for DME.

Anita Greenberg (410) 786–4601, for issues related to the clarification of the definition of routinely purchased DME.

Christopher Molling (410) 786–6399, for issues related to DMEPOS technical amendments and corrections.

Hafsa Vahora, (410) 786–7899, for issues related to the implementation of budget neutral fee schedules for splints and casts, and IOLs inserted in a physician's office.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Electronic Access

This **Federal Register** document is also available from the **Federal Register** online database through *Federal Digital System (FDsys),* a service of the U.S. Government Printing Office. This database can be accessed via the internet at *http://www.gpo.gov/fdsys/.*

Addenda Are Only Available Through the Internet on the CMS Web site

In the past, a majority of the Addenda referred to throughout the preamble of our proposed and final rules were available in the **Federal Register**. However, the Addenda of the annual proposed and final rules will no longer be available in the **Federal Register**. Instead, these Addenda to the annual proposed and final rules will be available only through the Internet on the CMS Web site. The Addenda to the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS) rules are available at: *http://www.cms.gov/ESRDPayment/PAY/list.asp.* Readers who experience any problems accessing any of the Addenda to the proposed and final rules of the ESRD PPS that are posted on the CMS Web site identified

above should contact Michelle Cruse at 410–786–7540.

Table of Contents

To assist readers in referencing sections contained in this preamble, we are providing a Table of Contents. Some of the issues discussed in this preamble affect the payment policies, but do not require changes to the regulations in the Code of Federal Regulations (CFR).

Acronyms

Because of the many terms to which we refer by acronym in this final rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

AHRQ Agency for Healthcare Research and Quality
ASP Average Sales Price
BLS Bureau of Labor Statistics
CBSA Core based statistical area
CCN CMS Certification Number
CDC Centers for Disease Control and Prevention
CKD Chronic Kidney Disease
CY Calendar Year
DFC Dialysis Facility Compare
DME Durable Medical Equipment
DMEPOS Durable Medical Equipment, Prosthetics, Orthotics, and Supplies
ESA Erythropoiesis stimulating agent
ESRD End-Stage Renal Disease
ESRDB End-Stage Renal Disease bundled
ESRD PPS End-Stage Renal Disease Prospective Payment System
FDA Food and Drug Administration
GEM General Equivalence Mappings
HAIs Healthcare-Acquired Infections
HCPCS Healthcare Common Procedure Coding System
HHS Department of Health and Human Services
ICD International Classification of Diseases
ICD–9–CM International Classification of Disease, 9th Revision, Clinical Modification
ICH CAHPS In-Center Hemodialysis Consumer Assessment of Healthcare Providers and Systems
IGI IHS Global Insight
IOLs Intraocular Lenses
IPPS Inpatient Prospective Payment System
MAP Medicare Allowable Payment
MFP Multifactor Productivity
MLR Minimum Lifetime Requirement
NHSN National Health Safety Network
NQF National Quality Forum
OMB Office of Management and Budget
PFS Physician Fee Schedule
QIP Quality Incentive Program
SHR Standardized Hospitalization Ratio Admissions
SMR Standardized Mortality Ratio
TPS Total Performance Score
VBP Value Based Purchasing

I. Executive Summary

A. Purpose

1. End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)

On January 1, 2011, we implemented the ESRD PPS, a case-mix adjusted bundled prospective payment system for renal dialysis services furnished by ESRD facilities. Effective January 1, 2014, the transition to the ESRD PPS will conclude and all Medicare ESRD facilities will be paid 100 percent under the ESRD PPS. This rule proposes to update and make revisions to the End-Stage Renal Disease (ESRD) prospective payment system (PPS) for calendar year (CY) 2014. In accordance with section 1881(b)(14) of the Social Security Act (the Act), as added by section 153(b) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Public Law 110–275), and section 1881(b)(14)(F) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Affordable Care Act (ACA) (Pub. L. 111–148), established that beginning CY 2012, and each subsequent year, the Secretary shall reduce the market basket increase factor by a productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act.

In addition, section 1881(b)(14)(I) of the Act, as added by section 632(a) of the American Taxpayer Relief Act of 2012 (ATRA) (Pub. L. 112–240) requires the Secretary, by comparing per patient utilization from 2007 with such data from 2012, to reduce the single payment amount to reflect the Secretary's estimate of the change in the utilization of ESRD-related drugs and biologicals. Section 632(b) of ATRA prevents the Secretary from paying for oral-only ESRD-related drugs and biologicals under the ESRD PPS before January 1, 2016.

2. End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP)

This rule also proposes to set forth requirements for the ESRD Quality Incentive Program (QIP), including for payment year (PY) 2016. The program is authorized under section 153(c) of MIPPA, which added section 1881(h) to the Social Security Act (the Act). The ESRD QIP is the most recent step in fostering improved patient outcomes by establishing incentives for dialysis facilities to meet performance standards established by CMS.

3. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)

This rule would clarify the definition of routinely purchased equipment covered under the DME benefit category and the scope of the 3-year minimum lifetime requirement (MLR) for DME. In addition, this rule proposes to implement budget neutral fee schedules for splints and casts as well as intraocular lenses (IOLs) inserted in a physician's office. Finally, this rule would make a few technical amendments and corrections to existing regulations related to payment for DMEPOS items and services.

B. Summary of the Major Provisions

1. ESRD PPS

- *Update to the ESRD PPS base rate for CY 2014:* For CY 2014, we propose an ESRD PPS base rate of $216.95. This amount reflects the application of the proposed ESRD bundled (ESRDB) market basket reduced by the productivity adjustment, or 2.5 percent, the wage index budget-neutrality adjustment factor of 1.000411, and the drug utilization adjustment to the CY 2013 ESRD PPS base rate of $240.36. The proposed CY 2014 ESRDB market basket increase factor is 2.9 percent. The current forecast of the proposed CY 2014 productivity adjustment is 0.4 percent. The proposed drug utilization adjustment factor to account for changes in utilization as required by section 1881(b)(14)(I) is −12 percent.
- *Updates to the wage index and wage index floor:* We adjust wage indices on an annual basis using the most current hospital wage data to account for differing wage levels in areas in which ESRD facilities are located. In CY 2014, we are not proposing any changes to the application of the wage index budget-neutrality adjustment factor and will continue to apply the budget-neutrality

adjustment to the base rate for the ESRD PPS. We have been gradually decreasing the wage index floor by .05 in an effort to gradually phase out the floor. For CY 2014 and CY 2015 we are proposing to continue our policy for the gradual phase out of the wage index floor and to reduce the wage index floor values to 0.45 and 0.40, respectively.

• *Update to the outlier policy:* We are updating the outlier services fixed dollar loss amounts for adult and pediatric patients and Medicare Allowable Payments (MAPs) for adult patients for CY 2014 using 2012 claims data. Based on the use of more current data, the fixed-dollar loss amount for pediatric beneficiaries would increase from $47.32 to $54.23 and the MAP amount would remain $38.65 as compared to CY 2013 values. For adult beneficiaries, the fixed-dollar loss amount would decrease from $110.22 to $94.26 and the MAP amount would decrease from $61.38 to $52.45. The 1 percent target for outlier payments was not achieved in CY 2012. We believe using CY 2012 claims data to update the outlier MAP and fixed dollar loss amounts for CY 2014 will increase payments for ESRD beneficiaries requiring higher resource utilization in accordance with a 1 percent outlier percentage.

• *Application of ICD–10–CM Diagnosis Codes to the comorbidity payment adjustment codes:* Effective October 1, 2014, CMS will implement the 10th revision of the ICD coding scheme. We discuss and provide a crosswalk from ICD–9–CM to ICD–10–CM for codes that are subject to the comorbidity payment adjustment. We propose that all ICD–10–CM codes to which ICD–9–CM codes that are eligible for the comorbidity payment adjustment crosswalk will be eligible for the comorbidity payment adjustment with two exceptions.

2. ESRD QIP

This proposed rule proposes to implement requirements for the ESRD QIP. With respect to the PY 2016 ESRD QIP, we propose to continue some of the previous ESRD QIP measures; add new measures, and expand the scope of some of the existing measures to cover the measure topics as follows:

- To evaluate anemia management:
  - Hemoglobin Greater Than 12 g/dL, a clinical measure
  - Patient Informed Consent for Anemia Treatment, a clinical measure*
  - Anemia Management, a reporting measure†
  - Pediatric Iron Therapy, a reporting measure*
- To evaluate dialysis adequacy:
  - A Kt/V measure for adult hemodialysis patients, a clinical measure
  - A Kt/V measure for adult peritoneal dialysis patients, a clinical measure
  - A Kt/V measure for pediatric hemodialysis patients, a clinical measure
- To determine whether patients are treated using the most beneficial type of vascular access:
  - An arteriovenous fistula measure, a clinical measure
  - A catheter measure, a clinical measure
- To address effective bone mineral metabolism management:
  - Hypercalcemia, a clinical measure*
  - Mineral Metabolism, a reporting measure†
- To address safety:
  - National Healthcare Safety Network (NHSN) Bloodstream Infection in Hemodialysis Outpatients, a clinical measure*
- To assess patient experience:
  - ICH CAHPS survey reporting measure‡
- To gather data regarding comorbidities:
  - Comorbidity, a reporting measure*

* Denotes that this measure is new to the ESRD QIP.
† Denotes that this measure is revised in the ESRD QIP.
‡ Denotes that this measure is expanded in the ESRD QIP.

It also proposes to establish CY 2014 as the performance period for the PY 2016 ESRD QIP, establish performance standards for each measure, and adopt scoring and payment reduction methodologies that are similar to those finalized for the PY 2015 ESRD QIP.

3. DMEPOS

• *Definition of routinely purchased DME:* This rule would clarify the definition of routinely purchased DME set forth at section § 414.220(a), as well as address the classification of and payment for expensive items of DME and accessories (over $150) as a capped rental items in accordance with § 414.229, if the items were not acquired by purchase on a national basis at least 75 percent of the time during the period July 1986 through June 1987.

• *Clarification of to the 3-year MLR and Related Grandfathering Policy:* This rule would provide further clarification about how we would apply the 3-year minimum lifetime requirement (MLR) set forth at § 414.202, which must be satisfied for an item or device to be considered durable medical equipment.

• *Implementation of budget neutral fee schedules for splints and casts, and IOLs inserted in a physician's office:* For CY 2014, we are proposing to implement budget neutral fee schedule amounts for splints, casts, and IOLs inserted in a physician's office. Section 1842(s) of the Act authorizes CMS to implement fee schedule amounts for these items if they established so that they are initially budget neutral. In 2011, total allowed charges for splints and casts were $5.6 million, while total allowed charges for intraocular lenses inserted in a physician's office were $76 thousand.

C. Summary of Costs and Benefits

In section X.B. of this proposed rule, we set forth a detailed analysis of the impacts that the proposed changes would have on affected entities and beneficiaries. The impacts include the following:

1. Impacts of the Proposed ESRD PPS

The impact chart in section X.B.1. of this proposed rule displays the estimated change in payments to ESRD facilities in CY 2014 compared to estimated payments in CY 2013. The overall impact of the CY 2014 changes is projected to be a 9.4 percent decrease in payments. Hospital-based ESRD facilities have an estimated 9.3 percent decrease in payments compared with freestanding facilities with an estimated 9.4 percent decrease.

We estimate that the aggregate ESRD PPS expenditures would decrease by approximately $780 million from CY 2013 to CY 2014. This reflects a $210 million increase from the payment rate update, a $30 million increase due to the updates to the outlier threshold amounts, and a $1.02 billion decrease in expenditures specifically related to the −12 percent drug utilization adjustment required by section 1881(b)(14)(I). The estimated 9.4 percent overall payment decrease would result in a $190 million savings to beneficiaries.

2. Impacts for ESRD QIP

The overall economic impact of the proposed ESRD QIP is an estimated $26.4 million in PY 2016. In PY 2016, we expect the total payment reductions to be approximately $26.4 million, and the costs associated with the collection of information requirements for certain measures to be approximately $39.5 thousand. For PY 2017 and future payment years, we expect the costs associated with the collection of information requirements for the expanded ICH CAHPS measure in the proposed ESRD QIP to be approximately $9.7 million.

The ESRD QIP will continue to incentivize facilities to provide higher

quality care to beneficiaries. The reporting measures associated with the collection of information requirements are critical to better understanding the quality of care beneficiaries receive, particularly patients' experience of care, and will be used to incentivize improvements in the quality of care provided.

3. Impacts for DMEPOS

The overall impact of the DMEPOS proposal to implement fee schedules for splints and casts and IOLs inserted in a physician's office is insignificant. The reasonable charge amounts that we propose to convert to fee schedule amounts would be budget neutral the first year and would be updated annually thereafter based on the consumer price index for all consumers (CPI–U) for the 12-month period ending June 30 of the previous year and, reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. For the 3-year MLR, we believe that a vast majority of the categories of items that were classified as DME before January 1, 2012, did function for 3 or more years (76 FR 70289). The 3-year MLR is designed to represent a minimum threshold for determination of durability for equipment that is consistent with the statutory DME payment provisions and applies on a prospective basis, effective January 1, 2012. CMS recognizes that the healthcare industry and beneficiaries have come to rely on items that have qualified as DME on or prior to January 1, 2012, regardless of whether those items met the 3-year MLR set forth at § 414.202. We note that given that reliance and consistent with the regulation at § 414.202, CMS will not reopen those prior decisions and reclassify the equipment in light of the new 3-year standard. We believe that continuing the Medicare coverage for all the items that qualified as DME on or prior to January 1, 2012, could avoid disrupting the continuity of care for the beneficiaries that received these items for medical treatment prior to January 1, 2012, without creating a significant fiscal impact on the Medicare Program.

We expect that the overall impact of reaffirming the definition of routinely purchased DME and our proposal for classifying certain expensive items as cap rental would be a decrease in expenditures because payment on a 13-month capped rental basis rather than a lump sum purchase basis for certain, very expensive items would lower total payments for these items and because many beneficiaries would not rent the items for as long as 13 months.

II. Calendar Year (CY) 2014 End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)

A. Background on the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)

On August 12, 2010, we published in the **Federal Register** a final rule (75 FR 49030 through 49214) titled, "End-Stage Renal Disease Prospective Payment System", hereinafter referred to as the CY 2011 ESRD PPS final rule. In the CY 2011 ESRD PPS final rule, we implemented a case-mix adjusted bundled PPS for Medicare outpatient ESRD dialysis services beginning January 1, 2011, in accordance with section 1881(b)(14) of the Act, as added by section 153(b) of MIPPA.

On November 10, 2011, we published in the **Federal Register**, a final rule (76 FR 70228 through 70316) titled, "Medicare Program; End-Stage Renal Disease Prospective Payment System and Quality Incentive Program; Ambulance Fee Schedule; Durable Medical Equipment; and Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies" (hereinafter referred to as the CY 2012 ESRD PPS final rule). In that final rule, for the ESRD PPS, we made a number of routine updates for CY 2012, implemented the second year of the transition to the ESRD PPS, made several policy changes and clarifications, and made technical changes.

On November 9, 2012, we published in the **Federal Register**, a final rule (77 FR 67450 through 67531) titled, "Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Bad Debt Reductions for All Medicare Providers" (hereinafter referred to as the CY 2013 ESRD PPS final rule). In that final rule, for the ESRD PPS, we made a number of routine updates for CY 2013, implemented the third year of the transition to the ESRD PPS, and made several policy changes and reiterations. In that rule, we finalized the following:

- An ESRD PPS base rate of $240.36 per treatment for renal dialysis services. The ESRD PPS base rate applies to the ESRD PPS portion of the blended payments during the transition and to the ESRD PPS payments. This amount reflected the CY 2013 ESRD bundled (ESRDB) market basket update of 2.9 percent minus a multifactor productivity adjustment of 0.6 percent, that is, a 2.3 percent increase. This amount also reflected the application of the wage index budget-neutrality adjustment of 1.000613.
- A composite base rate of $145.20 per treatment for renal dialysis services that is used in the composite rate portion of the ESRD PPS payment for ESRD facilities receiving blended payments during the transition. This amount reflected the application of the ESRDB market basket reduced by the multifactor productivity adjustment, or a 2.3 percent increase.
- A zero update to the drug add-on adjustment and maintaining the $20.33 per treatment drug add-on amount for the composite rate portion of the ESRD PPS blended payment. This resulted in a 14.0 percent drug add-on adjustment to the composite rate portion of the ESRD PPS blended payment.
- A 0.1 percent transition budget-neutrality adjustment factor.
- A 1.001141 wage index budget-neutrality adjustment factor for the composite portion of the ESRD PPS blended payment, which is applied to the wage index values.
- A 1.000613 wage index budget-neutrality adjustment factor for the ESRD PPS portion of the blended payment and for the ESRD PPS, which is applied to the ESRD PPS base rate.
- A 0.05 reduction to the wage index floor which resulted in a wage index floor of 0.500 under the ESRD PPS.
- A 0.501 wage index floor under the composite rate portion of the blended payment ($1.500 \times 1.001141 = 0.501$).
- Revisions to the outlier policy. Specifically, for pediatric beneficiaries, a fixed-dollar loss amount of $47.32 and a Medicare Allowable Payment (MAP) amount of $41.39. For adult beneficiaries, a fixed-dollar loss amount of $110.22 and a MAP amount of $59.42.
- Eliminating the restriction on daptomycin to allow ESRD facilities to receive separate payment by appending the AY modifier on the claim for daptomycin when the diagnosis reported on the claim indicates the drug was used to treat a non-ESRD related condition.
- Excluding alteplase and other thrombolytics from separate payment for the composite rate portion of blended payments during the remainder of the transition.
- Use of the Average Sales Price (ASP) methodology, including any modifications finalized in the Physician Fee Schedule (PFS) final rules, to compute outlier MAP amounts, the drug add-on, and any other policy that requires the use of payment amounts for drugs and biologicals that would be separately paid absent the ESRD PPS and for the composite rate portion of the blended payment during the transition.

Finally, in the CY 2013 ESRD PPS final rule, we reiterated policies regarding the following billing practices because we believed that ESRD facilities may be billing renal dialysis services for separate payment:

- Any item or service included in the composite rate should not be identified on ESRD claims.
- An AY modifier can be appended to claims for drugs and laboratory tests that are not ESRD-related to allow for separate payment. The AY modifier should not be used for renal dialysis services and we have monitoring efforts in place to analyze billing trends.

B. Routine Updates and Proposed Policy Changes to the CY 2014 ESRD PPS

1. Composite Rate Portion of the ESRD PPS Blended Payment

Section 1881(b)(14)(E)(i) of the Act requires a 4-year transition under the ESRD PPS. We are proposing to implement the fourth year of the transition for those ESRD facilities that did not elect to receive 100 percent of the payment amount under the ESRD PPS. For CY 2014, under 42 CFR 413.239(a)(4), 100 percent of the payment amount will be determined in accordance with section 1881(b)(14). Accordingly, a blended rate will no longer be provided, all facilities will be paid 100 percent under the ESRD PPS, and there will no longer be a transition budget neutrality adjustment factor applied to these payments starting on January 1, 2014. Therefore, facilities that participate in the transition will no longer receive a portion of their payments based on the basic case-mix adjusted composite rate payment system. Because payments will no longer be based on the basic case-mix adjusted composite rate, we will not update the drug add-on or wage index values (which included a budget neutrality adjustment factor) that comprised that rate. In this proposed rule we only discuss updates and policy changes that affect the components of the ESRD PPS.

2. ESRD PPS Base Rate

In the CY 2011 ESRD PPS final rule (75 FR 49071 through 49083), we discussed the development of the ESRD PPS per treatment base rate that is codified in the Medicare regulations at § 413.220 and § 413.230. The CY 2011 ESRD PPS final rule also provides a detailed discussion of the methodology used to calculate the ESRD PPS base rate and the computation of factors used to adjust the ESRD PPS base rate for projected outlier payments and budget-neutrality in accordance with sections 1881(b)(14)(D)(ii) and 1881(b)(14)(A)(ii) of the Act, respectively. Specifically, the ESRD PPS base rate was developed from CY 2007 claims (that is, the lowest per patient utilization year as required by section 1881(b)(14)(A)(ii) of the Act), updated to CY 2011, and represented the average per treatment Medicare Allowable Payment (MAP) for composite rate and separately billable services. In accordance with section 1881(b)(14)(D) of the Act and codified in regulations at § 413.230, the ESRD PPS base rate is adjusted for the patient-specific case-mix adjustments, applicable facility adjustments, geographic differences in area wage levels using an area wage index, as well as applicable outlier payments or training payments.

As discussed in section II.B.3., section 1881(b)(14)(F)(i) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Affordable Care Act, provides that, beginning in 2012, the ESRD PPS payment amounts are required to be annually increased by the rate of increase in the ESRD market basket, reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II). Accordingly, for this proposed rule, we applied the 2.5 percent increase to the CY 2013 ESRD PPS base rate of $240.36, which results in a proposed CY 2014 ESRD PPS base rate of $246.37 ($240.36 × 1.025 = $246.37).

In addition, as discussed in section II.B.4.d. of this proposed rule, for CY 2014 we are applying the wage index budget-neutrality adjustment factor of 1.000411 to the CY 2014 ESRD PPS base rate (that is, $246.37), yielding a proposed CY 2014 ESRD PPS wage-index budget-neutrality adjusted base rate of $246.47 ($246.37 × 1.000411 = $246.47).

a. Proposed Adjustment to the ESRD PPS Base Rate to Reflect Change in Utilization of ESRD-Related Drugs and Biologicals

Section 1881(b)(14)(I) of the Act, as added by section 632(a) of the American Taxpayer Relief Act of 2012 (ATRA), requires that, for services furnished on or after January 1, 2014, the Secretary shall make reductions to the single payment for renal dialysis services to reflect the Secretary's estimate of the change in the utilization of ESRD-related drugs and biologicals (excluding oral-only ESRD-related drugs) by comparing per patient utilization data from 2007 with such data from 2012. Section 1881(b)(14)(I) further requires that in making the reductions, the Secretary take into account the most recently available data on Average Sales Prices (ASP) and changes in prices for drugs and biologicals reflected in the ESRD market basket percentage increase factor under section 1881(b)(14)(F). Consistent with these requirements, we propose to apply a payment adjustment to the CY 2014 ESRD PPS base rate that reflects the change in utilization of ESRD-related drugs and biologicals from CY 2007 to CY 2012.

i. Methodology for Reducing the CY 2014 ESRD PPS Base Rate

We are proposing an adjustment that would reduce the ESRD PPS base rate. Because the ESRD PPS base rate is a per treatment base rate, the adjustment would be calculated on a per treatment basis. We propose to calculate the amount of the per treatment adjustment by applying CY 2014 prices for ESRD-related drugs and biologicals to the utilization data for CY 2007 and CY 2012. We note the CY 2014 ESRD PPS base rate is reflective of 2007 utilization because the base rate is based on CY 2007 data. We believe using prices for drugs and biologicals inflated to 2014 levels allows us to appropriately measure changes that are attributable to utilization patterns as opposed to differences in pricing for drugs and biologicals in 2007 and 2012. In addition, we believe that because we are proposing to make the reduction in CY 2014, we should price the ESRD-related drugs and biologicals for the year in which the adjustment applies. For purposes of this analysis, we view utilization of drugs and biologicals as units of a drug or biological furnished to a patient per treatment for ESRD. We would take the estimated amount of the per treatment difference between the estimated spending of drugs and biologicals in CY 2007 and CY 2012 and reduce this amount by the same adjustment factors that were used to calculate the ESRD PPS base rate from the CY 2007 unadjusted rate per treatment, which are the standardization, outlier, and the 98 percent budget-neutrality adjustments. A detailed explanation of these adjustment factors is provided in the CY 2011 ESRD PPS final rule (75 FR 49081 through 49082). We propose to reduce the CY 2014 ESRD PPS base rate by the resulting amount.

ii. Determining Utilization of ESRD-Related Drugs and Biologicals

Section 1881(b)(14)(I) requires the single payment amount to be reduced by an amount that "reflects the Secretary's estimate of the change in utilization of drugs and biologicals described in clauses (ii), (iii), and (iv) of subparagraph (B) (other than oral-only

ESRD-related drugs, as such term is used in the final rule promulgated by the Secretary in the **Federal Register** on August 12, 2010 (75 FR 49030))". As we mentioned above, for purposes of this analysis, we view utilization of drugs and biologicals as units of a drug or biological furnished to a patient per treatment. ESRD facilities report this information on claims. To calculate this adjustment, we analyzed the utilization of erythropoiesis stimulating agents (ESAs) and any oral forms of such agents furnished to individuals for the treatment of ESRD. We also analyzed the utilization of other injectable drugs and biologicals (such as iron sucrose and doxercalciferol) and any oral equivalent form of such drug or biological furnished to individuals for the treatment of ESRD that were included in the expanded bundle of services covered by the ESRD PPS. We did not include diagnostic laboratory tests or other items and services in the comparison analysis because section 1811(b)(14)(I) only refers to estimating the change in utilization of drugs and biologicals.

Section 1881(b)(14)(I) of the Act requires the Secretary to compare per patient utilization data from 2007 with per patient utilization data from 2012. For the CY 2007 utilization data for ESRD-related drugs and biologicals, we propose to use the data analysis prepared for the CY 2011 ESRD PPS final rule. In the CY 2011 ESRD PPS final rule (75 FR 49071 through 49083) we discuss in detail the development of the ESRD PPS base rate and as we stated above, the base rate represents the average MAP for composite rate and separately billable services which was based on 2007 claims data. We explain in the CY 2011 ESRD PPS final rule that in order to comply with section 1881(b)(14)(A)(ii) of the Act we determined that 2007 was the year with the lowest per patient utilization of renal dialysis services by Medicare ESRD beneficiaries among the years 2007, 2008, and 2009. Therefore, utilization data for ESAs and other drugs and biologicals including the oral-equivalent forms of those drugs and biologicals furnished for the treatment of ESRD was readily available for purposes of analyzing 2007 utilization.

For the CY 2012 utilization data for ESRD-related drugs and biologicals, we propose to use the latest available claims data based on the CY 2012 ESRD facility claims updated through December 31, 2012 (that is, claims with dates of service from January 1 through December 31, 2012, that were received, processed, paid, and passed to the National Claims History File as of December 31, 2012). For the CY 2014 ESRD PPS final rule, we will use the CY 2012 claims file updated through June 30, 2013, (that is, claims with dates of service from January 1 through December 31, 2012, that were received, processed, paid, and passed to the National Claims History File as of June 30, 2013) to calculate 2012 utilization. We solicit comments on the proposed use of 2007 and 2012 claims data to capture the utilization of ESRD-related drugs and biologicals in those years.

Because section 1881(b)(14)(I) requires that we compare per patient utilization of ESRD-related drugs and biologicals in 2007 with per patient utilization in 2012, we believe that this would also include utilization of drugs and biologicals furnished in ESRD facilities located in the United States Territories of Guam, American Samoa and the Northern Mariana Islands (the Pacific Rim), even though facilities in the Pacific Rim were not paid under the ESRD PPS during these years. Therefore, we propose to use 2007 and 2012 utilization of ESRD-related drugs and biologicals (including oral equivalents) for ESRD facilities located in these territories in our analysis of the reduction required by section 1881(b)(14)(I). For this proposed rule, we did not readily have access to the 2007 utilization data for the ESRD facilities located in these areas; however, we plan to include these data in our calculation for the final rule. Because there are very few ESRD facilities in this region, we do not believe that the inclusion of utilization of drugs and biologicals furnished in CY 2007 at these facilities will have a significant impact on the amount of the adjustment. We solicit comments on the proposal to include data on the utilization of drugs and biologicals furnished in ESRD facilities located in the Pacific Rim when comparing utilization of drugs and biologicals in CY 2007 with CY 2012.

iii. Pricing of ESRD-Related Drugs and Biologicals

As we stated above, we are proposing to price ESRD-related drugs and biologicals to CY 2014 to allow for an accurate comparison between utilization of those drugs and biologicals furnished in CY 2007 with utilization in CY 2012. In order to price ESRD-related drugs and biologicals based on CY 2014 prices, we started with CY 2011 prices as established and published in the CY 2011 ESRD PPS final rule.

During the development of the ESRD PPS base rate, we included the MAP amounts for ESRD-related drugs and biologicals that were, prior to January 1, 2011, separately paid under Part B. For setting the CY 2011 ESRD PPS base rate, for Part B separately billable drugs, we used the first two quarters of ASP+6 and then used the Producer Price Index (PPI) to inflate the prices to CY 2011 (75 FR 49079). We also included the MAP amounts for the ESRD-related oral-equivalent drugs and biologicals that were, prior to January 1, 2011, separately paid under Part D (75 FR 49080). For setting the CY 2011 ESRD PPS base rate for these drugs, we used the growth rates for overall prescription drug prices that were used in the National Health Expenditure Projections (NHE) for updating prices for former Part D drugs to CY 2011 from CY 2007.

We propose to inflate the prices established in the CY 2011 ESRD PPS final rule for ESRD-related drugs and biologicals and their oral equivalents to CY 2014 by applying the ESRD bundled (ESRDB) market basket, the productivity adjustment, and the wage index budget neutrality adjustment factors. Because the base rate and the ESRDB market basket account for ESRD-related drugs and biologicals, and we have updated all components of the base rate annually using a market basket minus productivity with wage index budget neutrality adjustment factor, we believe that using these inflation factors are consistent with how these services are paid under the ESRD PPS. The drug component of the ESRDB market basket uses the PPI for prescription drugs as a proxy for the growth in drug prices. We believe using the ESRDB market basket to price drugs and biologicals for CY 2014 complies with the requirement in section 1881(b)(14)(I) that the Secretary take into account the changes in prices for drugs and biologicals reflected in the ESRDB market basket percentage increase factor. The ESRDB market basket minus productivity increase factors were 2.1 percent and 2.3 percent for CY 2012 and CY 2013, respectively. The proposed CY 2014 update is 2.5 percent. The wage index budget neutrality adjustment factors for the same years are 1.001520, 1.000613, and a proposed factor of 1.000411. Therefore, we propose to use a total growth update factor of 7.3 percent (1.021*1.023*1.025*1.001520* 1.000613*1.000411 = 1.073) to inflate prices for ESRD-related drugs and biologicals from CY 2011 levels to CY 2014 levels. We solicit comments on the use of the ESRDB market basket percentage increase factor to inflate prices for drugs and biologicals to CY 2014 levels.

iv. Calculation of the Amount of the per Treatment Reduction

We applied the 2014 prices to the CY 2007 and CY 2012 drug and biological utilization data to calculate aggregate amounts for each year. For drugs and biologicals for which we have utilization data for CY 2012, but that were not present on CY 2007 claims, we priced these drugs using the ASP+6 percent price for 2012, which is an average of the four quarter prices, and inflated it using the CY 2013 and the CY 2014 proposed ESRDB market basket, productivity, and wage index budget neutrality adjustment factors. While most of these drugs had minimal utilization, we note that Feraheme was the only significant exception. Specifically, Feraheme was not available until January 2010 and once the drug was available, the use of the drug rose to the top 12th drug furnished to ESRD beneficiaries. Next, we divided each year's estimated aggregate amount for drugs and biologicals by that year's count of treatments furnished to Medicare beneficiaries to get an average payment per treatment for the year. This resulted in a per treatment amount for drugs and biologicals of $83.76 in 2007 and a per treatment amount for drugs and biologicals of $51.42 in 2012. We then subtracted the average payment per treatment for CY 2012 from the average amount per treatment for CY 2007 to get a total of $32.34 ($83.76 − $51.42 = $32.34). We then reduced this amount by the standardization, the outlier, and the 98 percent budget neutrality adjustments to get a total of $29.52 ($32.34 × .9407 × .99 × .98 = $29.52). We would apply these adjustments before reducing the base rate because the base rate was reduced by these adjustments when it was first established, and the reduction should be adjusted in the same way to make the two figures comparable. We would then reduce the CY 2014 proposed base rate of $246.47 by $29.52, resulting in the CY 2014 proposed base rate of $216.95. A reduction of $29.52 from the proposed CY 2014 ESRD PPS base rate results in a 12 percent reduction in Medicare payments. We solicit comments on the proposed methodology for the reduction to the ESRD PPS base rate to reflect the change in the utilization of ESRD-related drugs and biologicals from CY 2007 to CY 2012.

While we propose to implement the full reduction in CY 2014, we note that we are also concerned that this one-time reduction to the ESRD PPS base rate could be a significant reduction to ESRD facilities for the year and potentially impact beneficiary access to care. Therefore, we are soliciting comments on a potential transition or phase-in period of the 12 percent reduction and the number of years for such transition or phase-in period.

v. Comparison of ASP Versus PPI

Section 1881(b)(14)(I) requires the Secretary to "take into account the most recently available data on average sales prices and changes in prices for drugs and biologicals reflected in the ESRDB market basket percentage increase factor" in making the reduction to the ESRD PPS base rate to reflect the change in utilization of ESRD-related drugs and biologicals from CY 2007 to CY 2012. While we could have chosen to inflate prices for drugs and biologicals to 2014 levels with more recently available ASP data, we believe using a growth based on the ESRDB market basket is more appropriate because it reflects what Medicare is required to pay for the drugs and biologicals through the ESRD PPS base rate. We performed an alternative analysis using prices based on the first quarter 2013 ASP+6 percent prices and the National Drug Code (NDC) prices published on the CMS Web site located at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Outlier_Services.html* that are used for outlier calculations, and the PPI to project to CY 2014. The results are minimally different (a difference of $29.40 versus $29.52), and we believe that the ESRDB market basket approach is a more appropriate measure of how Medicare pays for these drugs under the ESRD PPS.

We are soliciting comments on the potential use of ASP instead of the ESRDB market basket to inflate drug prices to 2014 levels for purposes of the drug utilization adjustment.

3. ESRD Bundled Market Basket

a. Overview and Background

In accordance with section 1881(b)(14)(F)(i) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Affordable Care Act, beginning in 2012, the ESRD payment amounts are required to be annually increased by an ESRD market basket increase factor that is reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. The application of the productivity adjustment described may result in the increase factor being less than 0.0 for a year and may result in payment rates for a year being less than the payment rates for the preceding year. The statute also provides that the market basket increase factor should reflect the changes over time in the prices of an appropriate mix of goods and services used to furnish renal dialysis services.

b. Proposed Market Basket Update Increase Factor and Labor-Related Share for ESRD Facilities for CY 2014

As required under section 1881(b)(14)(F)(i) of the Act, CMS developed an all-inclusive ESRDB input price index (75 FR 49151 through 49162). Although "market basket" technically describes the mix of goods and services used for ESRD treatment, this term is also commonly used to denote the input price index (that is, cost categories, their respective weights, and price proxies combined) derived from a market basket. Accordingly, the term "ESRDB market basket," as used in this document, refers to the ESRDB input price index.

For this proposed rule, we propose to use the same methodology and the CY 2008-based ESRDB market basket described in the CY 2011 ESRD PPS final rule (75 FR 49151 through 49162) to compute the CY 2014 ESRDB market basket increase factor and labor-related share based on the best available data. Consistent with historical practice, we estimate the ESRDB market basket update based on IHS Global Insight (IGI), Inc.'s forecast using the most recently available data. IGI is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

Using this methodology and the IGI forecast for the first quarter of 2013 of the CY 2008-based ESRDB market basket (with historical data through the fourth quarter of 2012), and consistent with our historical practice of estimating market basket increases based on the best available data, the proposed CY 2014 ESRDB market basket increase factor is 2.9 percent.

For the CY 2014 ESRD payment update, we propose to continue using a labor-related share of 41.737 percent for the ESRD PPS payment, which was finalized in the CY 2011 ESRD final rule (75 FR 49161).

c. Proposed Productivity Adjustment

Under section 1881(b)(14)(F)(i) of the Act, as amended by section 3401(h) of the Affordable Care Act, for CY 2012 and each subsequent year, the ESRD market basket percentage increase factor shall be reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. The statute defines the productivity adjustment as equal to the 10-year moving average of changes in annual economy-wide private nonfarm business

multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost reporting period, or other annual period) (the "MFP adjustment"). The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private nonfarm business MFP. Please see *http://www.bls.gov/mfp* to obtain the BLS historical published MFP data.

CMS notes that the proposed and final methodology for calculating and applying the MFP adjustment to the ESRD payment update is similar to the methodology used in other payment systems, as required by section 3401 of the Affordable Care Act.

The projection of MFP is currently produced by IGI. The details regarding the methodology for forecasting MFP and how it is applied to the market basket were finalized in the CY 2012 ESRD PPS final rule (76 FR 70232 through 70234). Using this method and the IGI forecast for the first quarter of 2013 of the 10-year moving average of MFP, the proposed CY 2014 MFP factor is 0.4 percent.

d. Calculation of the ESRDB Market Basket Update, Adjusted for Multifactor Productivity for CY 2014

Under section 1881(b)(14)(F) of the Act, beginning in CY 2012, ESRD PPS payment amounts shall be annually increased by an ESRD market basket percentage increase factor reduced by the productivity adjustment. We are proposing to use the same methodology for calculating the ESRDB market basket updates adjusted for MFP that was finalized in the CY 2012 ESRD PPS final rule (76 FR 70234).

Thus, in accordance with section 1881(b)(14)(F)(i) of the Act, the proposed ESRDB market basket percentage increase factor for CY 2014 is based on the 1st quarter 2013 forecast of the CY 2008-based ESRDB market basket, which is estimated to be 2.9 percent. This market basket percentage is then reduced by the MFP adjustment (the 10-year moving average of MFP for the period ending CY 2014) of 0.4 percent, which is based on IGI's 1st quarter 2013 forecast. The resulting proposed MFP-adjusted ESRDB market basket update for CY 2014 is equal to 2.5 percent, or 2.9 percent less 0.4 percentage point. If more recent data is subsequently available (for example, a more recent estimate of the market basket or MFP adjustment), we will use such data, if appropriate, to determine the CY 2014 market basket update and MFP adjustment in the CY 2014 ESRD PPS final rule.

4. The Proposed CY 2014 Wage Index

Section 1881(b)(14)(D)(iv)(II) of the Act provides that the ESRD PPS may include a geographic wage index payment adjustment, such as the index referred to in section 1881(b)(12)(D) of the Act. In the CY 2011 ESRD PPS final rule (75 FR 49117), we finalized the use of the Office of Management and Budget's (OMB) Core-Based Statistical Areas (CBSAs)-based geographic area designations to define urban and rural areas and their corresponding wage index values. In the CY 2012 ESRD PPS final rule (76 FR 70239) we finalized that, under the ESRD PPS, we will continue to utilize the ESRD PPS wage index methodology, first established under the basic case-mix adjusted composite rate payment system, for updating the wage index values using the OMB's CBSA-based geographic area designations to define urban and rural areas and corresponding wage index values; the gradual reduction of the wage index floor during the transition; and the policies for areas with no hospital data. The CBSA-based geographic area designations were originally described in OMB bulletin 03–04, issued June 6, 2003. This bulletin, as well as subsequent bulletins, is available online at *http://www.whitehouse,gov/omb/bulletins*.

OMB publishes bulletins regarding CBSA changes, including changes to CBSA numbers and titles. In accordance with our established methodology, we have historically adopted any CBSA changes that are published in the OMB bulletin that corresponds with the IPPS hospital wage index. For FY 2014, we use the FY 2013 pre-floor, pre-reclassified hospital wage index to adjust the ESRD PPS payments. On February 28, 2013, OMB issued OMB Bulletin No. 13–01, which establishes revised delineations of statistical areas based on OMB standards published in the **Federal Register** on June 28, 2010 and 2010 Census Bureau data. Because the FY 2013 pre-floor, pre-reclassified hospital wage index was finalized prior to the issuance of this Bulletin, the FY 2013 pre-floor, pre-reclassified hospital wage index does not reflect OMB's new area delineations based on the 2010 Census and, thus, the FY 2014 ESRD PPS wage index will not reflect the OMB changes. As stated in the FY 2014 IPPS/LTCH PPS proposed rule, CMS intends to propose changes to the hospital wage index based on this OMB Bulletin in the FY 2015 IPPS/LTCH PPS proposed rule (78 FR 27486 (May 10, 2013)). Therefore, we anticipate that the OMB Bulletin changes will be reflected in the FY 2015 hospital wage index. Because we base the ESRD PPS wage index on the hospital wage index from the prior year, we anticipate that the OMB Bulletin changes would be reflected in the CY 2015 ESRD PPS wage index.

For CY 2014, we will continue to use the same methodology as finalized in the CY 2011 ESRD PPS final rule (75 FR 49117), for determining the wage indices for ESRD facilities in CY 2014. Specifically, we propose to adjust wage indices for CY 2014 to account for annually updated wage levels in areas in which ESRD facilities are located. We propose to use the most recent, FY 2014 inpatient prospective payment system (IPPS) pre-floor, pre-reclassified hospital wage index. The ESRD PPS wage index values are calculated without regard to geographic reclassifications authorized under section 1886(d)(8) and (d)(10) of the Act and utilize pre-floor hospital data that are unadjusted for occupational mix. The proposed CY 2014 wage index values for urban areas are listed in Addendum A (Wage Indices for Urban Areas) and the proposed CY 2014 wage index values for rural areas are listed in Addendum B (Wage Indices for Rural Areas). Addenda A and B are located on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/End-Stage-Renal-Disease-ESRD-Payment-Regulations-and-Notices.html*.

In the CY 2011 ESRD PPS final rule (75 FR 49117), we finalized a policy to use the labor-related share of 41.737 for the ESRD PPS portion of the payment. For the CY 2014 ESRD PPS we are not proposing any changes to the labor-related share of 41.737. Because all providers that elected to participate in the transition are entering their fourth year of the transition and will begin being paid 100 percent under the ESRD PPS, the 53.711 labor-related share that was applied to the composite rate portion of the blended payment is no longer applicable. We discuss the methodology for the ESRD PPS labor-related share in our CY 2011 ESRD PPS final rule (75 FR 49161), where we note that the labor-related share is typically the sum of Wages and Salaries, Benefits, Housekeeping and Operations, Professional Fees, Labor-related Services, and a portion of the Capital-related Building and Equipment expenses. For additional discussions on the labor-related share please refer to section II.B.3.b. of this proposed rule.

a. Payment under the ESRD PPS for Facilities Located in Guam, American Samoa, and the Northern Mariana Islands and Proposed Wage Index Value for Guam

It came to our attention after the ESRD PPS was implemented that ESRD facilities located in the United States Territories of Guam, American Samoa and the Northern Mariana Islands (the Pacific Rim) have been paid on the basis of reasonable costs and charges, rather than under the ESRD PPS. Because section 1881(b)(14)(A)(i) of the Act requires the Secretary to implement a payment system under which a single payment is made to a renal dialysis facility for renal dialysis services in lieu of any other payment for services furnished on or after January 1, 2011, ESRD facilities located in the Pacific Rim must be paid under the ESRD PPS and will be paid under this system beginning for services furnished on or after January 1, 2014. In order to pay these facilities under the ESRD PPS, we must identify an appropriate wage index value for these areas as required under § 413.231 of the regulations. We propose to use the current value calculated under the existing methodology, that is, the pre-floor, pre-reclassification, hospital wage data that is unadjusted for occupational mix for the island of Guam of 0.9611, which is displayed in Addendum B (Wage Indices for Rural Areas). In addition, the most recent proposed FY 2014 IPPS pre-floor, pre-reclassified hospital wage data does not include wage data for American Samoa and the Northern Mariana Islands. Accordingly, we propose below to apply the wage index value for Guam to facilities located in American Samoa and the Northern Mariana Islands.

b. Proposed Policies for Areas with No Wage Data

In the CY 2011 ESRD PPS final rule (75 FR 49117), we finalized the use of the CBSA-based geographic area designations to define urban/rural areas and corresponding wage index values for the ESRD PPS. In that final rule (75 FR 49116 through 49117), we also discussed and finalized the methodologies we use to calculate wage index values for ESRD facilities that are located in urban and rural areas where there is no hospital data. For urban areas with no hospital data, we compute the average wage index value of all urban areas within the State and use that value as the wage index. For rural areas with no hospital data, we compute the wage index using the average wage index values from all contiguous CBSAs to represent a reasonable proxy for that rural area.

In the case of American Samoa and the Northern Mariana Islands, we believe that Guam represents a reasonable proxy because the islands are located within the Pacific Rim and share a common status as United States Territories. In addition, the Northern Mariana Islands and American Samoa are rural areas with no hospital data. Therefore, we will use our established methodology to compute an appropriate wage index using the average wage index values from contiguous CBSAs, to represent a reasonable proxy. While we appreciate that the islands of the Pacific Rim are not actually contiguous, we believe that same principle applies here, and that Guam is a reasonable proxy for American Samoa and the Northern Marianas. We note that if hospital data becomes available for any of the islands of the Pacific Rim we will use that data for the appropriate CBSA's instead of the proxy. As discussed previously, the current wage index value using the existing methodology for Guam is 0.9611. Therefore, for CY 2014, we propose to apply this wage index value of 0.9611 to ESRD facilities located in America Samoa and the Northern Mariana Islands, which we are including in Addendum B.

For CY 2014, the only urban area without wage index data is Hinesville-Fort Stewart, GA. As we discussed in our CY 2013 ESRD PPS (77 FR 67459), we will continue to use the statewide urban average based on the average of all urban areas within the state for urban areas without hospital data. For CY 2014 the wage index value for CBSA #11 (Georgia) is 0.7482 and this is included in Addendum A. Accordingly, we propose to apply the statewide urban average wage index value of 0.7582 to Hinesville-Fort Stewart, GA.

c. Proposed Reduction to the ESRD Wage Index Floor

A wage index floor value has been used in lieu of the calculated wage index values below the floor in making payment for renal dialysis services under the ESRD PPS. In the CY 2011 ESRD PPS final rule (75 FR 49116 through 49117), we finalized that we would continue to reduce the wage index floor by 0.05 for each of the remaining years of the transition. We further specified in the CY 2012 ESRD PPS (76 FR 70241) that we finalized the 0.05 reduction to the wage index floor for CYs 2012 and 2013, resulting in a wage index floor of 0.550 and 0.500, respectively.

Our intention has been to provide a wage index floor only through the 4-year transition to 100 percent implementation of the ERSD PPS (75 FR 49116 through 49117; 76 FR 70240 through 70241). Most recently, in the CY 2013 ESRD PPS final rule (77 FR 67459 through 67461), we discussed the elimination of the wage index floor beginning in CY 2014, noting that we would propose a new methodology in CY 2014 to address wages in rural Puerto Rico because we would no longer be applying a wage index floor. The CY 2014 wage index values for both urban and rural Puerto Rico remain below the finalized CY 2013 ESRD PPS wage index floor of 0.500 (77 FR 67459), however, and we believe that both rural and urban facilities in Puerto Rico would benefit from continuing the gradual reduction of the floor. We believe that continuing the wage index floor for CY 2014 and CY 2015 will allow renal dialysis facilities located in Puerto Rico the benefit afforded to other geographical areas in the fifty states of a gradual and systematic elimination of the wage index floor. Therefore, for CY 2014 and for CY 2015, we propose to continue to apply the wage index floor to areas with wage indexes below the floor. For CY 2014, Puerto Rico is the only area with a wage index value below the proposed floor; however, to the extent that other geographical areas fall below the floor in CY 2015 or beyond we believe they should have the benefit of a gradual reduction in the floor as well. We will continue to review wage index values and the appropriateness of a wage index floor in the future.

For CY 2014 and CY 2015, we also propose to continue our policy of gradually reducing the wage index floor by 0.05 per year. Specifically, we propose a wage index floor value of 0.45 for CY 2014 and a wage index floor value of 0.40 for CY 2015. We believe that continuing our policy of applying a wage index floor for an additional two years would allow Puerto Rico to benefit from the anticipated and predictable phase out of the wage index floor. While we would not expect to continue this policy past CY 2015, we will review the appropriateness of a wage index floor for CY 2016 at that time.

d. Proposed Wage Index Budget-Neutrality Adjustment

Section 1881(b)(14)(D)(iv)(II) of the Act gives us broad discretion to implement payment adjustments to the ESRD PPS, including an adjustment of the ESRD PPS by a geographic index. Section 1881(b)(14)(D)(iv)(II) specifically refers to section 1881(b)(12)(D) as an example of such a geographic index, and in the CY 2011

ESRD PPS final rule, we finalized the use of the same wage index methodology that we utilized under the basic case-mix adjusted composite rate payment system (75 FR 49116). We had applied a wage index budget-neutrality adjustment factor under the basic case-mix adjusted composite payment system, and accordingly, in the CY 2012 ESRD PPS final rule, we finalized a policy for CY 2012 and future years to apply wage index budget-neutrality adjustment factors to the composite rate portion of the ESRD PPS blended payments for facilities participating in the transition as well as to the base rate for the ESRD PPS portion of the blended payment and the full ESRD PPS for those facilities that elected to receive 100 percent of their payment under that system (76 FR 70241 and 70242). We also finalized the methodology for computing the wage index budget-neutrality adjustment factors for CY 2012 and subsequent years (76 FR 70242).

For CY 2014, we are not proposing any changes to the methodology, but we note that we will no longer compute a budget neutrality adjustment factor for the composite rate portion of the ESRD PPS blended payment because all facilities will be paid 100 percent under the ESRD PPS in CY 2014. For ease of reference, we explain the methodology for computing the budget-neutrality adjustment factor here. For the CY 2014 wage index budget-neutrality adjustment factor, we use the fiscal year (FY) 2014 pre-floor, pre-reclassified, non-occupational mix-adjusted hospital data to compute the wage index values, 2012 outpatient claims (paid and processed as of December 31, 2012), and geographic location information for each facility, which may be found through Dialysis Facility Compare. Dialysis Facility Compare (DFC) can be found at the DFC Web page on the CMS Web site at *http://www.medicare.gov/dialysisfacilitycompare/*. The FY 2014 hospital wage index data for each urban and rural locale by CBSA may also be accessed on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html?redirect=/AcuteInpatientPPS/WIFN/list.asp*. The wage index data are located in the section entitled, "FY 2014 Proposed Rule Occupational Mix Adjusted and Unadjusted Average Hourly Wage and Pre-Reclassified Wage Index by CBSA".

We computed the proposed CY 2014 wage index budget-neutrality adjustment factor using treatment counts from the 2012 claims and facility-specific CY 2013 payment rates to estimate the total dollar amount that each ESRD facility would have received in CY 2013. The total of these payments became the target amount of expenditures for all ESRD facilities for CY 2014. Next, we computed the estimated dollar amount that would have been paid for the same ESRD facilities using the proposed ESRD wage index for CY 2014. The total of these payments becomes the new CY 2014 amount of wage-adjusted expenditures for all ESRD facilities. The wage index budget-neutrality factor is calculated as the target amount divided by the new CY 2014 amount. When we multiplied the wage index budget-neutrality factor by the applicable CY 2014 estimated payments, aggregate payments to ESRD facilities would remain budget-neutral when compared to the target amount of expenditures. That is, the wage index budget-neutrality adjustment factor ensures that wage index adjustments do not increase or decrease aggregate Medicare payments with respect to changes in wage index updates. Therefore, we are proposing a wage index budget-neutrality adjustment factor of 1.000411, which would be computed in ESRD PPS base rate payment methodology when making payment for renal dialysis services in CY 2014.

5. Application of the International Classification of Diseases (ICD), Tenth Revision, to the Comorbidity Payment Adjustment Codes

In the CY 2011 ESRD PPS final rule (75 FR 49094), we explained that section 1881(b)(14)(D)(i) of the Act, as added by section 153(b) of MIPPA, requires that the ESRD PPS include a payment adjustment based on case-mix that may take into account, among other things, patient comorbidities. Comorbidities are specific patient conditions that coexist with the patient's principal diagnosis that necessitates dialysis. The comorbidity payment adjustment recognizes the increased costs associated with comorbidities and provides additional payment for certain conditions that occur concurrently with the need for dialysis.

To develop the comorbidity payment adjustment, we used a stepwise regression model to analyze comorbidity data and found that certain comorbidities are predictors of variation in payments for ESRD patients. Details on the development of the comorbidity categories eligible for the comorbidity payment adjustment, including an explanation of the stepwise regression model that we used to analyze comorbidity data, is discussed in the CY 2011 ESRD PPS final rule (75 FR 49094 through 49108). We analyzed the comorbidity categories and excluded those categories from the comorbidity payment adjustment that met any of three exclusion criteria (75 FR 49095 through 49100): (1) Inability to create accurate clinical definitions; (2) potential for adverse incentives regarding care; and (3) potential for ESRD facilities to directly influence the prevalence of the co-morbidity either by altering dialysis care, changing diagnostic testing patterns, or liberalizing the diagnostic criteria.

We finalized six comorbidity categories eligible for the comorbidity payment adjustment, each with associated International Classification of Disease, 9th Revision, Clinical Modification (ICD–9–CM) diagnosis codes (75 FR 49100). Among these categories are three acute, short-term diagnostic categories (pericarditis, bacterial pneumonia, and gastrointestinal tract bleeding with hemorrhage) and three chronic diagnostic categories (hereditary hemolytic anemia with sickle cell anemia, myelodysplastic syndrome, and monoclonal gammopathy). The comorbidity categories eligible for the adjustment and their associated ICD–9–CM codes were published in the Appendix of the CY 2011 ESRD PPS final rule as Table E: ICD–9–CM Codes Recognized for a Comorbidity Payment Adjustment (75 FR 49211).

In the CY 2012 ESRD PPS final rule (76 FR 70252), we clarified that the ICD–9–CM codes eligible for the comorbidity payment adjustment are subject to the annual ICD–9–CM coding updates that occur in the hospital inpatient PPS final rule and are effective October 1st of every year. We explained that any updates to the ICD–9–CM codes that affect the categories of comorbidities and the diagnoses within the comorbidity categories that are eligible for the comorbidity payment adjustment would be communicated to ESRD facilities through sub-regulatory guidance. Accordingly, Change Request (CR) 7476, Transmittal 2255, entitled, "Quarterly Update to the End-Stage Renal Disease Prospective Payment System, was issued on July 15, 2011 to update the ICD–9–CM codes eligible for the comorbidity payment adjustment in accordance with the annual ICD–9–CM update effective October 1, 2011. This CR can be found on the CMS Web site at the following link: *http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R2255CP.pdf*. There have not been updates to the ICD–9–CM codes eligible for the comorbidity

payment adjustment since October 1, 2011.

Effective October 1, 2014, CMS will implement the 10th revision of the ICD coding scheme—ICD–10–CM. Because the transition to ICD–10–CM coding will occur during CY 2014, we discuss here the crosswalk from ICD–9–CM to ICD–10–CM codes for the purpose of determining eligibility for the comorbidity payment adjustment.

We crosswalked the ICD–9–CM codes that are eligible for the comorbidity payment adjustment to ICD–10–CM codes using the General Equivalence Mappings (GEM) tool, which is the authoritative source for crosswalking developed by the National Center for Health Statistics and CMS. The crosswalk from ICD–9–CM to ICD–10–CM diagnosis codes resulted in three scenarios: One ICD–9–CM code could crosswalk to one ICD–10–CM code; one ICD–9–CM code crosswalked to multiple ICD–10–CM codes; or multiple ICD–9–CM crosswalked to one ICD–10–CM code. We applied the three exclusion criteria listed above to each of the ICD–10–CM codes to which the ICD–9–CM codes crosswalked.

In our clinical evaluation, we found the ICD–9–CM codes generally crosswalked to one ICD–10–CM code that codes for the same diagnosis, has the same code descriptor, and does not meet any of our exclusion criteria. Accordingly, with the exceptions noted below, we propose that ICD–10–CM codes will be eligible for the comorbidity payment adjustment where they crosswalk from ICD–9–CM codes that are eligible for the comorbidity payment adjustment. There are, however, two instances where ICD–9–CM codes crosswalk to ICD–10–CM codes that we believe meet one or more of the exclusion criteria described above, and we propose to exclude these codes from eligibility for the comorbidity payment adjustment.

a. One ICD–9–CM Code Crosswalks to One ICD–10–CM Code

Table 1 lists all the instances in which one ICD–9–CM code crosswalks to one ICD–10–CM code. We propose that all of those ICD–10–CM codes will be subject to the comorbidity payment adjustment with the exception of K52.81 Eosinophilic gastritis or gastroenteritis. Currently, 535.71 Eosinophilic gastritis with hemorrhage is one of 40 ICD–9–CM diagnosis codes under the acute comorbidity category of Gastrointestinal (GI) Bleeding. The descriptor of K52.81, the ICD–10–CM code to which this ICD–9–CM code crosswalks, does not include the word "hemorrhage." In the CY 2011 ESRD PPS final rule (75 FR 49097), we specifically limited the GI bleeding category for the comorbidity payment adjustment to GI bleed with hemorrhage because we believed that the gastrointestinal tract bleeding category met our first exclusion criterion—inability to create accurate clinical definitions—because it was overly broad. We also believed that use of this diagnosis category could lead to gaming consistent with the second and third exclusion criteria listed above. For these reasons, we limited the gastrointestinal tract bleeding diagnosis category to gastrointestinal tract bleeding with hemorrhage, which we believe creates accurate clinical definitions and mitigates the potential for adverse incentives in ESRD care. Accordingly, we propose to exclude ICD–10–CM code K52.81 Eosinophilic gastritis or gastroenteritis from eligibility for the comorbidity payment adjustment because the code descriptor does not indicate the diagnosis of a hemorrhage. We propose that all of the other ICD–10–CM codes listed in the Table 1 below will be eligible for the comorbidity payment adjustment.

TABLE 1—ONE ICD–9–CM CODE CROSSWALKS TO ONE ICD–10–CM CODE

ICD–9	Descriptor	ICD–10	Descriptor
	Gastrointestinal Bleeding		
530.21	Ulcer of esophagus with bleeding	K22.11	Ulcer of esophagus with bleeding
535.71	Eosinophilic gastritis, with hemorrhage	K52.81	Eosinophilic gastritis or gastroenteritis
537.83	Angiodysplasia of stomach and duodenum with hemorrhage.	K31.811	Angiodysplasia of stomach and duodenum with bleeding
569.85	Angiodysplasia of intestine with hemorrhage	K55.21	Angiodysplasia of colon with hemorrhage
	Bacterial Pneumonia		
003.22	Salmonella pneumonia	A02.22	Salmonella pneumonia
482.0	Pneumonia due to Klebsiella pneumonia	J15.0	Pneumonia due to Klebsiella pneumoniae
482.1	Pneumonia due to Pseudomonas	J15.1	Pneumonia due to Pseudomonas
482.2	Pneumonia due to Hemophilus influenzae [H. influenzae].	J14	Pneumonia due to Hemophilus influenzae
482.32	Pneumonia due to Streptococcus, group B	J15.3	Pneumonia due to streptococcus, group B
482.40	Pneumonia due to Staphylococcus, unspecified	J15.20	Pneumonia due to staphylococcus, unspecified
482.41	Methicillin susceptible pneumonia due to Staphylococcus aureus.	J15.211	Pneumonia due to Methicillin susceptible Staphylococcus aureus
482.42	Methicillin resistant pneumonia due to Staphylococcus aureus.	J15.212	Pneumonia due to Methicillin resistant Staphylococcus aureus
482.49	Other Staphylococcus pneumonia	J15.29	Pneumonia due to other staphylococcus
482.82	Pneumonia due to escherichia coli [E. coli]	J15.5	Pneumonia due to Escherichia coli
482.83	Pneumonia due to other gram-negative bacteria	J15.6	Pneumonia due to other aerobic Gram-negative bacteria
482.84	Pneumonia due to Legionnaires' disease	A48.1	Legionnaires' disease
507.0	Pneumonitis due to inhalation of food or vomitus	J69.0	Pneumonitis due to inhalation of food and vomit
507.8	Pneumonitis due to other solids and liquids	J69.8	Pneumonitis due to inhalation of other solids and liquids
510.0	Empyema with fistula	J86.0	Pyothorax with fistula
510.9	Empyema without mention of fistula	J86.9	Pyothorax without fistula

TABLE 1—ONE ICD–9–CM CODE CROSSWALKS TO ONE ICD–10–CM CODE—Continued

ICD–9	Descriptor	ICD–10	Descriptor
	Pericarditis		
420.91	Acute idiopathic pericarditis	I30.0	Acute nonspecific idiopathic pericarditis
	Hereditary Hemolytic and Sickle Cell Anemia		
282.0	Hereditary spherocytosis	D58.0	Hereditary spherocytosis
282.1	Hereditary elliptocytosis	D58.1	Hereditary elliptocytosis
282.41	Sickle-cell thalassemia without crisis	D57.40	Sickle-cell thalassemia without crisis
282.43	Alpha thalassemia	D56.0	Alpha thalassemia
282.44	Beta thalassemia	D56.1	Beta thalassemia
282.45	Delta-beta thalassemia	D56.2	Delta-beta thalassemia
282.46	Thalassemia minor	D56.3	Thalassemia minor
282.47	Hemoglobin E-beta thalassemia	D56.5	Hemoglobin E-beta thalassemia
282.49	Other thalassemia	D56.8	Other thalassemias
282.61	Hb-SS disease without crisis	D57.1	Sickle-cell disease without crisis
282.63	Sickle-cell/Hb-C disease without crisis	D57.20	Sickle-cell/Hb-C disease without crisis
282.68	Other sickle-cell disease without crisis	D57.80	Other sickle-cell disorders without crisis
	Myelodysplastic Syndrome		
238.7	Essential thrombocythemia	D47.3	Essential (hemorrhagic) thrombocythemia
238.73	High grade myelodysplastic syndrome lesions	D46.22	Refractory anemia with excess of blasts 2
238.74	Myelodysplastic syndrome with 5q deletion	D46.C	Myelodysplastic syndrome with isolated del(5q) chromosomal abnormality
238.76	Myelofibrosis with myeloid metaplasia	D47.1	Chronic myeloproliferative disease

b. One ICD–9–CM Code Crosswalks to Multiple ICD–10–CM Codes

Table 2 lists all of the instances in which one ICD–9–CM code crosswalks to multiple ICD–10–CM codes. In those instances, we propose that all the crosswalked ICD–10–CM codes will be subject to the comorbidity payment adjustment, with the exception of D89.2 Hypergammaglobulinemia, unspecified. ICD–9–CM code 273.1 Monoclonal paraproteinemia is the only ICD–9–CM code eligible for the comorbidity payment adjustment under the chronic comorbidity category of Monoclonal gammopathy. ICD–9–CM code 273.1 Monoclonal paraproteinemia crosswalks to two ICD–10–CM codes: D47.2 Monoclonal gammopathy and D89.2 Hypergammaglobulinemia, unspecified. We analyzed both of these ICD–10–CM codes and determined that D47.2 Monoclonal gammopathy should be eligible for the comorbidity payment adjustment because, like ICD–9–CM code 273.1 Monoclonal paraproteinemia, it indicates that there is an excessive amount of a single monoclonal gammaglobulin. When we analyzed the comorbidity category for the CY 2011 ESRD PPS final rule, single monoclonal gammaglobulin was shown to have an association with higher erythropoiesis stimulating agent (ESA) usage, thereby resulting in higher costs to dialysis facilities. After clinical evaluation of D89.2 Hypergammaglobulinemia, unspecified, however, we determined that this ICD–10–CM code should not be eligible for the comorbidity payment adjustment because D89.2 Hypergammaglobulinemia, unspecified indicates only that 1 or more immunoglobulins are elevated, but does not identify which immunoglobulin(s) are elevated. We believe that the lack of specificity of this particular code results in an inability to create an accurate clinical definition, which is the first of the three exclusion criteria. Accordingly, we propose that D89.2 Hypergammaglobulinemia, unspecified will not be eligible for the comorbidity payment adjustment. We propose that all of the other ICD–10–CM codes listed in Table 2 below will be eligible for the comorbidity payment adjustment.

TABLE 2—ONE ICD–9–CM CODE CROSSWALKS TO MULTIPLE ICD–10–CM CODES

ICD–9	Descriptor	ICD–10	Descriptor
	Gastrointestinal Bleeding		
562	Diverticulosis of small intestine with hemorrhage	K57.11	Diverticulosis of small intestine without perforation or abscess with bleeding.
		K57.51	Diverticulosis of both small and large intestine without perforation or abscess with bleeding.
562.03	Diverticulitis of small intestine with hemorrhage	K57.01	Diverticulitis of small intestine with perforation and abscess with bleeding.
		K57.13	Diverticulitis of small intestine without perforation or abscess with bleeding.
		K57.41	Diverticulitis of both small and large intestine with perforation and abscess with bleeding.
		K57.53	Diverticulitis of both small and large intestine without perforation or abscess with bleeding.
562.12	Diverticulosis of colon with hemorrhage	K57.31	Diverticulosis of large intestine without perforation or abscess with bleeding.

TABLE 2—ONE ICD–9–CM CODE CROSSWALKS TO MULTIPLE ICD–10–CM CODES—Continued

ICD–9	Descriptor	ICD–10	Descriptor
		K57.91	Diverticulosis of intestine, part unspecified, without perforation or abscess with bleeding.
		K57.51	Diverticulosis of both small and large intestine without perforation or abscess with bleeding.
562.13	Diverticulitis of colon with hemorrhage	K57.21	Diverticulitis of large intestine with perforation and abscess with bleeding.
		K57.33	Diverticulitis of large intestine without perforation or abscess with bleeding.
		K57.41	Diverticulitis of both small and large intestine with perforation and abscess with bleeding.
		K57.53	Diverticulitis of both small and large intestine without perforation or abscess with bleeding.
Bacterial Pneumonia			
513.0	Abscess of lung	J85.0	Gangrene and necrosis of lung.
		J85.1	Abscess of lung with pneumonia.
		J85.2	Abscess of lung without pneumonia.
Pericarditis			
420.0	Acute pericarditis in diseases classified elsewhere	A18.84	Tuberculosis of heart.
		I32	Pericarditis in diseases classified elsewhere.
		M32.12	Pericarditis in systemic lupus erythematosus.
420.90	Acute pericarditis, unspecified	I30.1	Infective pericarditis.
		I80.9	Acute pericarditis, unspecified.
420.99	Other acute pericarditis	I30.8	Other forms of acute pericarditis.
		I30.9	Acute pericarditis, unspecified.
Hereditary Hemolytic and sickle cell anemia			
282.2	Anemias due to disorders of glutathione metabolism	D55.0	Anemia due to glucose-6-phosphate dehydrogenase [G6PD] deficiency.
		D55.1	Anemia due to other disorders of glutathione metabolism.
282.3	Other hemolytic anemias due to enzyme deficiency	D55.2	Anemia due to disorders of glycolytic enzymes.
		D55.3	Anemia due to disorders of nucleotide metabolism.
		D55.8	Other anemias due to enzyme disorders.
		D55.9	Anemia due to enzyme disorder, unspecified.
282.42	Sickle-cell thalassemia with crisis	D57.411	Sickle-cell thalassemia with acute chest syndrome.
		D57.412	Sickle-cell thalassemia with splenic sequestration.
		D57.419	Sickle-cell thalassemia with crisis, unspecified.
282.62	Hb-SS disease with crisis	D57.00	Hb-SS disease with crisis, unspecified.
		D57.01	Hb-SS disease with acute chest syndrome.
		D57.02	Hb-SS disease with splenic sequestration.
282.64	Sickle-cell/Hb-C disease with crisis	D57.211	Sickle-cell/Hb-C disease with acute chest syndrome.
		D57.212	Sickle-cell/Hb-C disease with splenic sequestration.
		D57.219	Sickle-cell/Hb-C disease with crisis, unspecified.
282.69	Other sickle-cell disease with crisis	D57.811	Other sickle-cell disorders with acute chest syndrome.
		D57.812	Other sickle-cell disorders with splenic sequestration.
		D57.819	Other sickle-cell disorders with crisis, unspecified.
Monoclonal Gammopathy			
273.1	Monoclonal paraproteinemia	D47.2	Monoclonal gammopathy.
		D89.2	Hypergammaglobulinemia, unspecified.
Myelodysplastic Syndrome			
238.72	Low grade myelodysplastic syndrome lesions	D46.0	Refractory anemia without ring sideroblasts, so stated.
		D46.1	Refractory anemia with ring sideroblasts.
		D46.20	Refractory anemia with excess of blasts, unspecified.
		D46.21	Refractory anemia with excess of blasts 1.
		D46.4	Refractory anemia, unspecified.
		D46.A	Refractory cytopenia with multilineage dysplasia.
		D46.B	Refractory cytopenia with multilineage dysplasia and ring sideroblasts.
238.75	Myelodysplastic syndrome, unspecified	D46.9	Myelodysplastic syndrome, unspecified.

TABLE 2—ONE ICD–9–CM CODE CROSSWALKS TO MULTIPLE ICD–10–CM CODES—Continued

ICD–9	Descriptor	ICD–10	Descriptor
		D46.Z	Other myelodysplastic syndromes.

c. Multiple ICD–9–CM Codes Crosswalk to One ICD–10–CM Code

Table 3 displays the crosswalk where multiple ICD–9–CM codes crosswalk to one ICD–10–CM code. For the reasons explained above, we propose that all of the crosswalked ICD–10–CM codes listed below will be eligible for the comorbidity payment adjustment.

TABLE 3—MULTIPLE ICD–9–CM CODES CROSSWALK TO ONE ICD–10–CM CODE

ICD–9	Descriptor	ICD–10	Descriptor
Gastrointestinal Bleeding			
533.20	Acute peptic ulcer of unspecified site with hemorrhage and perforation, without mention of obstruction.	K27.2	Acute peptic ulcer, site unspecified, with both hemorrhage and perforation.
533.21	Acute peptic ulcer of unspecified site with hemorrhage and perforation, with obstruction.		
533.40	Chronic or unspecified peptic ulcer of unspecified site with hemorrhage, without mention of obstruction.	K27.4	Chronic or unspecified peptic ulcer, site unspecified, with hemorrhage.
533.41	Chronic or unspecified peptic ulcer of unspecified site with hemorrhage, with obstruction.		
533.60	Chronic or unspecified peptic ulcer of unspecified site with hemorrhage and perforation, without mention of obstruction.	K27.6	Chronic or unspecified peptic ulcer, site unspecified, with both hemorrhage and perforation.
533.61	Chronic or unspecified peptic ulcer of unspecified site with hemorrhage and perforation, with obstruction.		
534.00	Acute gastrojejunal ulcer with hemorrhage, without mention of obstruction.	K28.0	Acute gastrojejunal ulcer with hemorrhage.
534.01	Acute gastrojejunal ulcer, with hemorrhage, with obstruction.		
534.20	Acute gastrojejunal ulcer with hemorrhage and perforation, without mention of obstruction.	K28.2	Acute gastrojejunal ulcer with both hemorrhage and perforation.
534.21	Acute gastrojejunal ulcer with hemorrhage and perforation, with obstruction.		
534.40	Chronic or unspecified gastrojejunal ulcer with hemorrhage, without mention of obstruction.	K28.4	Chronic or unspecified gastrojejunal ulcer with hemorrhage.
534.41	Chronic or unspecified gastrojejunal ulcer, with hemorrhage, with obstruction.		
534.60	Chronic or unspecified gastrojejunal ulcer with hemorrhage and perforation, without mention of obstruction.	K28.6	Chronic or unspecified gastrojejunal ulcer with both hemorrhage and perforation.
534.61	Chronic or unspecified gastrojejunal ulcer with hemorrhage and perforation, with obstruction.		
Bacterial Pneumonia			
482.30	Pneumonia due to Streptococcus, unspecified	J15.4	Pneumonia due to other streptococci.
482.31	Pneumonia due to Streptococcus, group A.		
482.39	Pneumonia due to other Streptococcus.		
482.81	Pneumonia due to anaerobes	J15.8	Pneumonia due to other specified bacteria.
482.89	Pneumonia due to other specified bacteria.		

In summary, based on our clinical evaluation of the ICD–10–CM codes to which the eligible ICD–9–CM codes crosswalk, we propose that both D89.2 Hypergammaglobulinemia, unspecified and K52.81 Eosinophilic gastritis or gastroenteritis would not be eligible for the comorbidity payment adjustment. We propose that all other ICD–10–CM codes to which eligible ICD–9–CM codes crosswalk that are listed in the Tables above will be eligible for the comorbidity payment adjustment effective October 1, 2014. We are soliciting comments on the ICD–10–CM codes that we propose to exclude and those we propose will be eligible for the comorbidity payment adjustment.

6. Proposed Revisions to the Outlier Policy

Section 1881(b)(14)(D)(ii) of the Act requires that the ESRD PPS include a payment adjustment for high cost outliers due to unusual variations in the type or amount of medically necessary care, including variability in the amount of erythropoiesis stimulating agents (ESAs) necessary for anemia management. Our regulations at 42 CFR

§ 413.237(a)(1) provide that ESRD outlier services are the following items and services that are included in the ESRD PPS bundle: (i) ESRD-related drugs and biologicals that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B; (ii) ESRD-related laboratory tests that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B; (iii) medical/surgical supplies, including syringes, used to administer ESRD-related drugs, that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B; and (iv) renal dialysis service drugs that were or would have been, prior to January 1, 2011, covered under Medicare Part D, excluding ESRD-related oral-only drugs.

In the CY 2011 ESRD PPS final rule (75 FR 49142), we stated that for purposes of determining whether an ESRD facility would be eligible for an outlier payment, it would be necessary for the facility to identify the actual ESRD outlier services furnished to the patient by line item on the monthly claim. The ESRD-related drugs, laboratory tests, and medical/surgical supplies that we would recognize as outlier services were specified in Attachment 3 of Change Request 7064, Transmittal 2033 issued August 20, 2010, rescinded and replaced by Transmittal 2094, dated November 17, 2010. With respect to the outlier policy, Transmittal 2094 identified additional drugs and laboratory tests that may be eligible for ESRD outlier payment. Transmittal 2094 was rescinded and replaced by Transmittal 2134, dated January 14, 2011, which was issued to correct the subject on the Transmittal page and made no other changes.

In the CY 2012 ESRD PPS final rule (76 FR 70246), we eliminated the issuance of a specific list of eligible outlier service drugs which were or would have been separately billable under Medicare Part B prior to January 1, 2011. However, we use separate guidance to continue to identify renal dialysis service drugs which were or would have been covered under Part D for outlier eligibility purposes in order to provide unit prices for calculating imputed outlier services. We also can identify, through our monitoring efforts, items and services that are incorrectly being identified as eligible outlier services in the claims data. Any updates to the list of renal dialysis items and services that qualify as outlier services are made through administrative issuances, if necessary.

Our regulations at 42 CFR § 413.237(a)(2) through (a)(6), (b), and (c) specify the methodology used to calculate outlier payments. An ESRD facility is eligible for an outlier payment if its actual or imputed Medicare Allowable Payment (MAP) amount per treatment for ESRD outlier services exceeds a threshold. The MAP amount represents the average incurred amount per treatment for services that were or would have been considered separately billable services prior to January 1, 2011. The threshold is equal to the ESRD facility's predicted ESRD outlier services MAP amount per treatment (which is case-mix adjusted) plus the fixed dollar loss amount. In accordance with § 413.237(c) of the regulations, facilities are paid 80 percent of the per treatment amount by which the imputed MAP amount for outlier services (that is, the actual incurred amount) exceeds this threshold. ESRD facilities are eligible to receive outlier payments for treating both adult and pediatric dialysis patients.

In the CY 2011 ESRD PPS final rule, using 2007 data, we established the outlier percentage at 1.0 percent of total payments (75 FR 49142 through 49143). We also established the fixed dollar loss amounts that are added to the predicted outlier services MAP amounts. The outlier services MAP amounts and fixed dollar loss amounts are different for adult and pediatric patients due to differences in the utilization of separately billable services among adult and pediatric patients (75 FR 49140).

As we explained in the CY 2011 ESRD PPS final rule (75 FR 49138 and 49139), the predicted outlier services MAP amounts for a patient are determined by multiplying the adjusted average outlier services MAP amount by the product of the patient-specific case-mix adjusters applicable using the outlier services payment multipliers developed from the regression analysis to compute the payment adjustments. The average outlier services MAP amount per treatment for CY 2011 was based on payment amounts reported on 2007 claims and adjusted to reflect projected prices for 2011. For CY 2012, the outlier services MAP amounts and fixed dollar loss amounts were based on 2010 data (76 FR 70250). Thus, for CYs 2011 and 2012, the MAP and fixed dollar loss amounts were computed based on pre-ESRD PPS claims data and utilization. For CY 2013, the outlier services MAP amounts and fixed dollar loss amounts were based on 2011 data (77 FR 67464). Therefore, the outlier thresholds for CY 2013 were based on utilization of ESRD-related items and services furnished under the ESRD PPS. Because of the lower utilization of epoetin and other outlier services in CY 2011, we lowered the MAP amounts and fixed dollar loss amounts for both adult and pediatric patients for CY 2013 to allow for an increase in payments for ESRD beneficiaries requiring higher resources.

a. Impact of Proposed Changes to the Outlier Policy

For CY 2014, we are not proposing any changes to the methodology used to compute the MAP or fixed dollar loss amounts. Rather, in this proposed rule, we are updating the outlier services MAP amounts and fixed dollar loss amounts to reflect the utilization of outlier services reported on the 2012 claims using the December 2012 claims file. Accordingly, for CY 2014, the MAP and fixed dollar loss amounts are based on the ESRD PPS claims and utilization. The impact of this update is shown in Table 4, which compares the outlier services MAP amounts and fixed dollar loss amounts used for the outlier policy in CY 2013 with the updated estimates for this proposed rule. The estimates for the proposed outlier CY 2014 outlier policy, which are included in Column II of Table 4, were inflation-adjusted to reflect projected 2014 prices for outlier services.

TABLE 4—OUTLIER POLICY: IMPACT OF USING UPDATED DATA TO DEFINE THE OUTLIER POLICY

	Column I Final outlier policy for CY2013 (based on 2011 data price inflated to 2013)*		Column II Proposed outlier policy for CY2014 (based on 2012 data price inflated to 2014)*	
	Age <18	Age >= 18	Age <18	Age >= 18
Average outlier services MAP amount per treatment[1]	$38.65	$61.38	$38.65	$52.45
Adjustments				

TABLE 4—OUTLIER POLICY: IMPACT OF USING UPDATED DATA TO DEFINE THE OUTLIER POLICY—Continued

	Column I Final outlier policy for CY2013 (based on 2011 data price inflated to 2013) *		Column II Proposed outlier policy for CY2014 (based on 2012 data price inflated to 2014) *	
	Age <18	Age >= 18	Age <18	Age >= 18
Standardization for outlier services [2]	1.0927	0.9878	1.0960	0.9893
MIPPA reduction	0.98	0.98	0.98	0.98
Adjusted average outlier services MAP amount [3]	$41.39	$59.42	$41.51	$50.85
Fixed dollar loss amount that is added to the predicted MAP to determine the outlier threshold [4]	$47.32	$110.22	$54.23	$94.26
Patient months qualifying for outlier payment	7.6%	5.1%	6.2%	5.1%

* The outlier services MAP amounts and fixed dollar loss amounts were inflation adjusted to reflect updated prices for outlier services (that is, 2013 prices in Column I and projected 2014 prices in Column II).

[1] Excludes patients for whom not all data were available to calculate projected payments under an expanded bundle. The outlier services MAP amounts are based on 2012 data. The medically unbelievable edits of 400,000 units for EPO and 1,200 mcg for Aranesp that are in place under the ESA claims monitoring policy were applied.

[2] Applied to the average outlier MAP per treatment. Standardization for outlier services is based on existing case mix adjusters for adult and pediatric patient groups.

[3] This is the amount to which the separately billable (SB) payment multipliers are applied to calculate the predicted outlier services MAP for each patient.

[4] The fixed dollar loss amounts were calculated using 2012 data to yield total outlier payments that represent 1% of total projected payments for the ESRD PPS.

As seen in Table 4, the estimated fixed dollar loss amount that determines the 2014 outlier threshold amount for adults (Column II) is lower than that used for the 2013 outlier policy (Column I). The estimated fixed dollar loss amount that determines the 2014 outlier threshold amount for pediatric patients (Column II) is higher than that used for the 2013 outlier policy (Column I). The main reason for the reduction for adult patients is that the lower utilization of epoetin and other outlier services continued to decline during the second year of the PPS. This can be seen by comparing the outlier service MAP amount per treatment for adult patients in Column I ($61.38, which is based on 2011 data) with that amount in Column II ($52.45, which is based on 2012 data).

For pediatric patients, there was no change in the overall average outlier service MAP amount between 2011 and 2012 ($38.65 per treatment in both Columns I and II). In addition, there was a greater tendency in 2012 for a relatively small percentage of pediatric patients to account for a disproportionate share of the total outlier service MAP amounts. The one percent target for outlier payments is therefore expected to be achieved based on a smaller percentage of pediatric outlier cases using 2012 data compared to 2011 data (6.2 percent of pediatric patient months are expected to qualify for outlier payments rather than 7.6 percent). These patterns led to the estimated fixed dollar loss amount for pediatric patients being higher for the outlier policy for CY 2014 compared to the outlier policy for CY 2013. Generally, there is a relatively higher likelihood for pediatric patients that the outlier threshold may be adjusted to reflect changes in the distribution of outlier service MAP amounts. This is due to the much smaller overall number of pediatric patients compared to adult patients, and therefore to the fact that the outlier threshold for pediatric patients is calculated based on data for a much smaller number of pediatric patients compared to adult patients.

We propose to update the fixed dollar loss amounts that are added to the predicted MAP amounts per treatment to determine the outlier thresholds for CY 2014 from $110.22 to $94.26 for adult patients and from $47.32 to $54.23 for pediatric patients compared with CY 2013 amounts. We estimate that the percentage of patient months qualifying for outlier payments under the current policy will be 5.1 percent and 6.2 percent for adult and pediatric patients, respectively, based on the 2012 data. The pediatric outlier MAP and fixed dollar loss amounts continue to be lower for pediatric patients than adults due to the continued lower use of outlier services (primarily reflecting lower use of epoetin and other injectable drugs).

b. Outlier Policy Percentage

42 CFR 413.220(b)(4) stipulates that the per treatment base rate is reduced by 1 percent to account for the proportion of the estimated total payments under the ESRD PPS that are outlier payments. Based on the 2012 claims, outlier payments represented approximately 0.2 percent of total payments, again falling short of the 1 percent target due to the continuing decline in use of outlier services. Use of 2012 data to recalibrate the thresholds, which reflect lower utilization of EPO and other outlier services, is expected to result in aggregate outlier payments close to the 1 percent target in CY 2014. We believe the proposed update to the outlier MAP and fixed dollar loss amounts for CY 2014 will increase payments for ESRD beneficiaries requiring higher resource utilization and come closer to meeting our 1 percent outlier policy.

We note that recalibration of the fixed dollar loss amounts in this proposed rule for CY 2014 outlier payments results in no change in payments to ESRD facilities for beneficiaries with renal dialysis items and services that are not eligible for outlier payments, but increases payments to providers for beneficiaries with renal dialysis items and services that are eligible for outlier payments. Therefore, beneficiary co-insurance obligations would also increase for renal dialysis services eligible for outlier payments.

C. Discussion of Self-Dialysis and Home Dialysis Training Add-on Adjustment and Request for Public Comments

a. Medicare Policy for Self-Dialysis Training, Home Dialysis Training, and Retraining

The existing Medicare policy for furnishing self-dialysis training, home dialysis training, and retraining was finalized in our CY 2011 ESRD PPS final rule (75 FR 49062 through 49064) and further discussed in the Medicare Benefits Policy Manual, (Publication 100–02, Chapter 11). Self-dialysis or home dialysis can only be performed

after an ESRD patient has completed an appropriate course of training. The scope of training services that a certified ESRD facility must furnish to ESRD patients as a condition of coverage is described at 42 CFR 494.100(a). For instance, 42 CFR 494.100(a)(2) states that the training must be conducted by a registered nurse. For additional information on the requirements for ESRD facilities in furnishing dialysis training, see 42 CFR Part 494, and additional information regarding home dialysis training certification, see the State Operations Manual, which may be viewed on the Medicare Web site at the following link: *http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Dialysis.html.*

42 CFR 494.70 (Condition: Patients' rights) requires that facilities inform patients (or their representatives) of their rights and responsibilities when they begin their treatment and protect and provide for the exercise of those rights. Our regulation at 42 CFR § 494.70(7) requires a facility to inform patients about all treatment modalities' and settings, including but not limited to transplantation, home dialysis modalities, and in-facility hemodialysis. This includes the patient's right to receive resource materials for dialysis modalities not offered by the facility. We expect that all ESRD facilities comply with this regulation and furnish resource information on home hemodialysis, even if this modality is not offered by the facility. When ESRD facilities are certified for home dialysis training we expect the facility to provide training throughout the self-dialysis or home dialysis experience (42 CFR 494.100). Self-dialysis or home dialysis training services and supplies may include but are not limited to personnel services; dialysis supplies, parenteral items used in dialysis, written training manuals and materials, and ESRD-related items and services.

We discuss Medicare's training policies in Table 5 (Medicare's Self or Home Training by Modality) for the following dialysis modalities:

- Home Hemodialysis Training
- Intermittent Peritoneal Dialysis Training
- Continuous Ambulatory Peritoneal Dialysis Training
- Continuous Cycling Peritoneal Dialysis Training

We would expect that patients who elect self-dialysis or home dialysis training will be good candidates for these modalities and that they will be successful in completing the method of training. This includes compliance with patient assessments as described in 42 CFR 494.80(a)(9) "Evaluation of the patient's abilities, interests, preferences, and goals, including the desired level of participation in the dialysis care process; the preferred modality (hemodialysis or peritoneal dialysis), and setting (for example, home dialysis), and the patients expectations of care outcomes."

TABLE 5—MEDICARE'S SELF OR HOME TRAINING BY MODALITY

Home Hemodialysis (HHD) Training	HHD training is generally furnished in 4 weeks. Medicare will pay the ESRD facility for up to 25 HHD training sessions. In some HHD programs, the dialysis caregiver is trained to perform the dialysis treatment in its entirety and the patient plays a secondary role. In other programs, the patient performs most of the treatment and is only aided by a helper.
Intermittent Peritoneal Dialysis (IPD) Training	IPD training is generally furnished in 4 weeks. Medicare will pay the ESRD facility for up to 15 PD training sessions. In the IPD program, the patient's caregiver is usually trained to carry out the dialysis care. The patient plays a minimal role, as most are unable to perform self-care dialysis because of other debilitating conditions.
Continuous Ambulatory Peritoneal Dialysis (CAPD) Training.	CAPD training is generally furnished in 2 weeks. Medicare will pay the ESRD facility for up to 15 PD training sessions. In CAPD programs both the patient and the caregiver are trained.
Continuous Cycling Peritoneal Dialysis (CCPD) Training.	CCPD training is generally furnished in 2 weeks. Medicare will pay the ESRD facility for up to 15 PD training sessions. In CCPD programs both the patient and the caregiver are trained.

b. Payment Methodology

In our CY 2011 ESRD PPS final rule (75 FR 49062 through 49064), we stated that the ESRD PPS base rate alone does not account for the staffing costs associated with training treatments furnished by a registered nurse. Thus, we finalized the training add-on payment adjustment, to be added on to the ESRD PPS base rate, when one-on-one self or home dialysis training is furnished by a nurse, working for a Medicare-certified training facility, to a Medicare beneficiary for either hemodialysis or the peritoneal dialysis training modalities listed above. Likewise, we noted in our CY 2012 ESRD PPS final rule (76 FR 70252), that "ESRD facilities receive a per-treatment payment that accounts for case-mix, geographic location, low-volume, and outlier payment regardless [of whether] the patient receives dialysis at home or in the facility, plus the training add-on[,]" if applicable.

The add-on payment adjustment is also for retraining sessions after a patient or caregiver has completed the initial training program and if the patient continues to be an appropriate candidate for self or home dialysis modalities. We would expect that most Medicare beneficiaries receive retraining sessions when they receive new equipment, have a change in caregiver, or modality change. The ESRD facility may not bill Medicare for retraining services when they install home dialysis equipment or furnish monitoring services. For example, an ESRD facility nurse may not bill for retraining sessions when they update a home dialysis patient's treatment record, order monthly supplies, or instruct the patient on the use of a new medication for the treatment of infection. When retraining sessions are furnished to a patient or caregiver, there is an expectation that the patient or caregiver is already knowledgeable of the elements of home dialysis, and if additional training is being done for a change of equipment or a change in modality, fewer sessions would be necessary because of the transferability of certain basic skills for home dialysis.

We discuss our policy for retraining sessions in the Medicare Benefit Policy Manual, Publication 100–02, Chapter 11. If a Medicare beneficiary exceeds the maximum amount of training sessions based upon their modality, and, if they continue to be a good candidate for home modalities, additional training sessions or retraining sessions may be paid by Medicare with medical justification. In such cases, the ESRD facility must indicate the medical justification on the claim for the training or retraining session submitted for payment. Because the requirement of medical justification is specific to the patient's training needs, circumstances (such as a change in caregiver), or condition (change in modality), we

would not expect that an ESRD facility would routinely bill Medicare for training or retraining sessions on any patient.

For CY 2011, we finalized the amount for the training add-on adjustment at $33.44 per treatment, and noted that this amount would be added to the ESRD PPS base rate payment when a training treatment is furnished by the ESRD facility. In addition, we noted that because the training add-on adjustment is directly related to nursing salaries and that nursing salaries differ greatly based on geographic location, we would adjust the training add-on payment by the geographic area wage index applicable to the ESRD facility. (For further discussions on wage indexes, please see section II.B.4. of this proposed rule.) When home dialysis training sessions are furnished to a Medicare beneficiary by a Medicare-certified training facility, Medicare will make the ESRD PPS computed base rate payment with all applicable adjustments, and then the separate add-on payment for self or home dialysis training.

In our CY 2013 ESRD final rule (77 FR 67468 through 67469), we addressed comments on Medicare's self and home dialysis training policies under the ESRD PPS. In that final rule, we stated that commenters were concerned that the payment for home dialysis training is insufficient and does not reflect the true costs of training and that they indicated various ranges of time required for home training in terms of time per day and number of training sessions. At that time, we responded to those comments by confirming that CMS will continue to monitor and analyze trends in home dialysis training, but that we believe our payment methodology is adequate for ESRD facilities furnishing training services.

In this proposed rule we are seeking comments on the costs associated with furnishing self or home dialysis training. We request comments on the elements of PD vs. HHD training sessions, specifically the costs of furnishing such training, the appropriate number of training sessions, and the duration of the training sessions. Lastly, we are also seeking comments on a "holdback" payment methodology, which we discussed in the CY 2011 ESRD PPS final rule (75 FR 49063). Under this methodology, a portion of the training payments would be withheld from the ESRD facility until the ESRD patient demonstrates that they have successfully transitioned to a home modality. Specifically, we are seeking comments on the length of time necessary for a successful transition to a home dialysis modality and the percentage of the payment that should be held back.

D. Delay of Payment for Oral-Only Drugs Under the ESRD PPS

Section 1881(b)(14)(A)(i) of the Act, as added by section 153(b) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), requires the Secretary to implement a payment system under which a single payment is made to a provider of services or a renal dialysis facility for "renal dialysis services" in lieu of any other payment. Section 1881(b)(14)(B) defines renal dialysis services, and subclause (iii) of that section states that these services include "other drugs and biologicals that are furnished to individuals for the treatment of ESRD and for which payment was (before the application of this paragraph) made separately under this title, and any oral equivalent form of such drug or biological[.]" We interpreted this provision as including not only injectable drugs and biologicals (other than ESAs, which are included under clause (ii)) used for the treatment of ESRD, but also all non-injectable drugs furnished under Title XVIII. We also concluded that, to the extent ESRD-related oral-only drugs do not fall within clause (iii) of the statutory definition of renal dialysis services, such drugs would fall under clause (iv), and constitute other items and services used for the treatment of ESRD that are not described in clause (i). Accordingly, we defined "renal dialysis services" at 42 CFR 413.174 as including, among other things, "[o]ther items and services that are furnished to individuals for the treatment of ESRD and for which payment was (prior to January 1, 2011) made separately under title XVIII of the Act (including drugs and biologicals with only an oral form)." Although oral-only drugs are included in the definition of renal dialysis services, in the CY 2011 ESRD PPS final rule, we also finalized a policy to delay payment for these drugs under the PPS until January 1, 2014 (75 FR 49044). We stated that there were certain advantages to delaying the implementation of payment for oral-only drugs, including allowing ESRD facilities additional time to make operational changes and logistical arrangements in order to furnish oral-only ESRD-related drugs and biologicals to their patients. Accordingly, 42 CFR 413.174(f)(6) provides that payment to an ESRD facility for renal dialysis service drugs and biologicals with only an oral form is incorporated into the PPS payment rates effective January 1, 2014.

On January 3, 2013, Congress enacted the American Taxpayer Relief Act of 2012 (ATRA). Section 632(b) of ATRA states that the Secretary "may not implement the policy under section 413.176(f)(6) of title 42, Code of Federal Regulations (relating to oral-only ESRD-related drugs in the ESRD prospective payment system), prior to January 1, 2016." Accordingly, payment for oral-only drugs will not be made under the ESRD PPS before January 1, 2016, instead of on January 1, 2014, which is the date originally finalized for payment of ESRD-related oral-only drugs under the ESRD PPS (75 FR 49044). We propose to pay for oral-only drugs consistent with section 632(b) of ATRA and implement this delay by revising the effective date for providing payment for oral-only ESRD-related drugs under the ESRD PPS at section 42 CFR 413.174(f)(6) from January 1, 2014 to January 1, 2016.

Because we propose that oral-only drugs will be included in the ESRD PPS starting in CY 2016, we also propose to change the reference to January 1, 2014 in section 42 CFR 413.237(a)(1)(iv) to January 1, 2016. In the CY 2011 ESRD PPS final rule (75 FR 49138), we defined outlier services as including oral-only drugs effective January 1, 2014. In addition to modifying the date on which oral-only drugs will be eligible for outlier payments, we also propose to clarify our regulation at 413.237(a)(1)(iv) by changing the word "excluding" to "including" to make clear that oral-only drugs are ESRD outlier services for purposes of the outlier policy effective January 1, 2016, consistent with the policy we established in the CY 2011 final rule (75 FR 49138).

III. End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP)

A. Background

For more than 30 years, monitoring the quality of care provided to patients with end-stage renal disease (ESRD) by dialysis facilities has been an important component of the Medicare ESRD payment system. The ESRD quality incentive program (QIP) is the most recent step in fostering improved patient outcomes by establishing incentives for dialysis facilities to meet or exceed performance standards established by CMS. The ESRD QIP is authorized by section 1881(h) of the Social Security Act (the Act), which was added by section 153(c) of Medicare Improvements for Patients and Providers Act (MIPPA). CMS established the ESRD QIP for payment year (PY) 2012, the initial year of the program in which payment reductions

were applied, in two rules published in the **Federal Register** on August 12, 2010, and January 5, 2011 (75 FR 49030 and 76 FR 628, respectively). Subsequently, on November 10, 2011, CMS published a rule in the **Federal Register** outlining the PY 2013 and PY 2014 ESRD QIP requirements (76 FR 70228). On November 9, 2012, CMS published a rule in the **Federal Register** outlining the ESRD QIP requirements for PY 2015 and future payment years (77 FR 67450).

Section 1881(h) of the Act requires the Secretary to establish an ESRD QIP by (i) selecting measures; (ii) establishing the performance standards that apply to the individual measures; (iii) specifying a performance period with respect to a year; (iv) developing a methodology for assessing the total performance of each facility based on the performance standards with respect to the measures for a performance period; and (v) applying an appropriate payment reduction to facilities that do not meet or exceed the established Total Performance Score (TPS). This proposed rule discusses each of these elements and our proposals for their application to PY 2016 and future payment years of the ESRD QIP. As of January 1, 2014, ESRD facilities located in Guam, American Samoa, and the Northern Mariana Islands will be paid under the ESRD PPS. Under section 1881(h)(1)(A) of the Act, these facilities will receive a reduction to their ESRD PPS payments, beginning with January 1, 2014 dates of service, if they do not meet the requirements of the ESRD QIP.

B. Considerations in Updating and Expanding Quality Measures Under the ESRD QIP for PY 2016 and Subsequent PYs

1. Value-Based Purchasing (VBP) Overview

Throughout the past decade, Medicare has been transitioning from a program that pays for healthcare based on particular services furnished to a beneficiary to a program that ties payments to providers and suppliers based on the quality of services they deliver. By paying for the quality of care rather than quantity of care, we believe we are strengthening the healthcare system by focusing on better care and lower costs through improvement, prevention and population health, expanded healthcare coverage, and enterprise excellence—while also advancing the National Strategy for Quality Improvement in Health Care (National Quality Strategy). CMS is currently working to update a set of domains and specific measures of quality for our VBP programs, and to link the aims of the National Quality Strategy with our payment policies on a national scale. We are working in partnership with beneficiaries, providers, advocacy groups, the National Quality Forum (NQF), the Measures Application Partnership, operating divisions within the Department of Health and Human Services (HHS), and other stakeholders to develop new measures where gaps exist, refine measures requiring adjustment, and remove measures when appropriate. We are also collaborating with stakeholders to ensure that the ESRD QIP serves the needs of our beneficiaries and also advances the goals of the National Quality Strategy to coordinate healthcare delivery, reduce healthcare costs, enhance patient satisfaction, promote healthy communities, and increase patient safety.[1]

We believe that the development of an ESRD QIP that is successful in supporting the delivery of high-quality healthcare services in dialysis facilities is paramount. We seek to adopt measures for the ESRD QIP that promote better, safer, and more efficient care. Our measure development and selection activities for the ESRD QIP take into account national priorities such as those established by the National Priorities Partnership (*http://www.nationalprioritiespartnership.org/*), HHS Strategic Plan (*http://www.hhs.gov/secretary/about/priorities/priorities.html*), the National Strategy for Quality Improvement in Healthcare (*http://www.healthcare.gov/center/reports/quality03212011a.html*), and the HHS National Action Plan to Prevent Healthcare Associated Infections (HAIs) (*http://www.hhs.gov/ash/initiatives/hai/esrd.html*). To the extent feasible and practicable, we have sought to adopt measures that have been endorsed by a national consensus organization, recommended by multi-stakeholder organizations, and developed with the input of providers, beneficiaries, and other stakeholders.

2. Brief Overview of Proposed PY 2016 Measures

For the PY 2016 ESRD QIP and future payment years, we are proposing a total of 14 measures. We believe that the PY 2016 ESRD QIP proposed measures promote high-quality care for patients with ESRD, and also strengthen the goals of the National Quality Strategy.

[1] 2012 Annual Progress Report to Congress: National Strategy for Quality Improvement in Health Care, *http://www.ahrq.gov/workingforquality/nqs/nqs2012annlrpt.pdf.*

The following measures seek to evaluate facilities on the clinical quality of care:

- To evaluate anemia management:
  - Hemoglobin Greater Than 12 g/dL, a clinical measure
  - Patient Informed Consent for Anemia Treatment, a clinical measure*
  - Pediatric Iron Therapy, a reporting measure*
  - Anemia Management, a reporting measure (revised)
- To evaluate dialysis adequacy:
  - A Kt/V measure for adult hemodialysis patients, a clinical measure
  - A Kt/V measure for adult peritoneal dialysis patients, a clinical measure
  - A Kt/V measure for pediatric hemodialysis patients, a clinical measure
- To determine whether patients are treated using the most beneficial type of vascular access:
  - An arterial venous (AV) fistula measure, a clinical measure
  - A catheter measure, a clinical measure
- To address effective bone mineral metabolism management:
  - Hypercalcemia, a clinical measure*
  - Mineral Metabolism, a reporting measure (revised)
- To address patient safety:
  - National Healthcare Safety Network (NHSN) Bloodstream Infection in Hemodialysis Outpatients, a clinical measure*
- To address patient-centered experience:
  - In-Center Hemodialysis Consumer Assessment of Healthcare Providers and Systems (ICH CAHPS), a reporting measure**
- To gather data regarding comorbidities:
  - Comorbidity, a reporting measure*

** Indicates that the measure is new to the ESRD QIP.

*** Indicates that the measure is newly expanded or converted to a clinical measure in the ESRD QIP.

At this time, we are not proposing to adopt measures that address care coordination, efficiency, population and community health, or cost of care. However, we are soliciting comments in this proposed rule on potential measures that would cover these areas. We welcome further comments on these and other potential measures for future program years.

3. Measures Application Partnership Review

Section 1890A(a)(1) of the Act, as added by section 3014(b) of the

Affordable Care Act, requires the entity with a contract under section 1890(a) of the Act (currently the NQF) to convene multi-stakeholder groups to provide input to the Secretary on the selection of quality and efficiency measures for use in certain programs. Section 1890A(a)(2) of the Act requires the Secretary to make available to the public (not later than December 1 of each year) a list of quality and efficiency measures that are under consideration for use in certain programs. Section 1890A(a)(3) of the Act requires the entity with a contract under section 1890(a) of the Act to transmit the input of the multi-stakeholder groups to the Secretary not later than February 1 of each year, beginning in 2012. Section 1890A(a)(4) of the Act requires the Secretary to take into consideration the input of the multi-stakeholder groups in selecting quality and efficiency measures. The Measures Application Partnership is the public/private partnership comprised of multi-stakeholder groups convened by NQF for the primary purpose of providing input on measures as required by sections 1890A(a)(1) and (3) of the Act. The Measures Application Partnership's input on the quality and efficiency measures under consideration for adoption in CY 2013 was transmitted to the Secretary on February 1, 2013, and is available at (*http://www.qualityforum.org/Setting_Priorities/Partnership/MAP_Final_Reports.aspx*). As required by section 1890A(a)(4) of the Act, we considered these recommendations in selecting quality and efficiency measures for the ESRD QIP.

We publicly made available a number of measures in accordance with section 1890A(a)(2) of the Act, and these measures were reviewed by the Measures Application Partnership. Of these measures, a subset is related to a number of proposed new measures for the PY 2016 ESRD QIP (one each for anemia management, hypercalcemia, infection monitoring, comorbidity reporting, and ESA usage). The Measures Application Partnership supported the following:

- NQF-endorsed measure NQF #1454: Proportion of patients with hypercalcemia
- NQF-endorsed measure NQF #1433: Use of Iron Therapy for Pediatric Patients (which forms the basis for the proposed Pediatric Iron Therapy reporting measure)
- NQF-endorsed measure NQF #1460: National Healthcare Safety Network (NHSN) Bloodstream Infection Measure (which forms the basis for the proposed Bloodstream Infection in Hemodialysis Outpatients clinical measure)
- NQF-endorsed measure NQF #0369: Dialysis Facility Risk-adjusted Standardized Mortality Ratio (the proposed Comorbidity reporting measure may assist in calculating performance on this measure, should we propose to adopt it in the future)

The Measures Application Partnership supported the direction of the following measures:

- NQF-endorsed measure NQF #1463: Standardized Hospitalization Ratio for Admissions (the proposed Comorbidity reporting measure may assist in calculating performance on this measure, should we propose to adopt it in the future)
- Measures Application Partnership #2774: Blood Transfusion Appropriateness (which forms the basis for the Patient Informed Consent for Anemia Treatment clinical measure)

We have taken comments from the Measures Application Partnership and the NQF into consideration for the PY 2016 ESRD QIP. In the measures section below, we further discuss these considerations, describe our proposals for the PY 2016 ESRD QIP, and provide rationale for why we believe it is appropriate to propose the measures at this time.

C. Proposed Measures for the PY 2016 ESRD QIP and Subsequent PYs of the ESRD QIP

We previously finalized ten measures in the CY 2013 ESRD PPS final rule for the PY 2015 ESRD QIP and future PYs (77 FR 67471), and these measures are summarized in Table 6 below. We are proposing to continue to use nine of the ten measures for the PY 2016 ESRD QIP and future payment years, modifying three of the measures as follows:

- ICH CAHPS (reporting measure): Expand
- Mineral Metabolism (reporting measure): Revise
- Anemia Management (reporting measure): Revise

For the PY 2016 ESRD QIP and future payment years, we are also proposing to add three new clinical measures (Patient Informed Consent for Anemia Treatment, Hypercalcemia, and NHSN Bloodstream Infection in Hemodialysis Outpatients), and two new reporting measures (Pediatric Iron Therapy, and Comorbidity). (See Table 7) We believe that, collectively, these measures will continue to promote improvement in dialysis care in the PY 2016 ESRD QIP and in future payment years.

TABLE 6—MEASURES ADOPTED FOR THE PY 2015 ESRD QIP AND FUTURE PAYMENT YEARS

NQF No.	Measure title and description
N/A	Anemia Management: Hgb >12. Percentage of Medicare patients with a mean hemoglobin value greater than 12 g/dL.
0249	Hemodialysis Adequacy: Minimum delivered hemodialysis dose. Percent of hemodialysis patient-months with spKt/V greater than or equal to 1.2.
0318	Peritoneal Dialysis Adequacy: Delivered dose above minimum. Percent of peritoneal dialysis patient-months with spKt/V greater than or equal to 1.7 (dialytic + residual) during the four month study period.
1423	Pediatric Hemodialysis Adequacy: Minimum spKt/V. Percent of pediatric in-center hemodialysis patient-months with spKt/V greater than or equal to 1.2.
0257	Vascular Access Type: Arterial Venous (AV) Fistula. Percentage of patient-months on hemodialysis during the last hemodialysis treatment of the month using an autogenous AV fistula with two needles.
0256	Vascular Access Type: Catheter >= 90 days. Percentage of patient-months for patients on hemodialysis during the last hemodialysis treatment of month with a catheter continuously for 90 days or longer prior to the last hemodialysis session.
N/A[1]	National Healthcare Safety Network (NHSN) Dialysis Event Reporting. Number of months for which facility reports NHSN Dialysis Event data to the Centers for Disease Control and Prevention (CDC).
N/A[2]	In-Center Hemodialysis Consumer Assessment of Healthcare Providers and Systems (ICH CAHPS) Survey Administration +. Attestation that facility administered survey in accordance with specifications.

TABLE 6—MEASURES ADOPTED FOR THE PY 2015 ESRD QIP AND FUTURE PAYMENT YEARS—Continued

NQF No.	Measure title and description
N/A[3]	Mineral Metabolism Reporting+. Number of months for which facility reports uncorrected serum calcium and phosphorus for each Medicare patient.
N/A	Anemia Management Reporting+. Number of months for which facility reports ESA dosage (as applicable) and hemoglobin/hematocrit for each Medicare patient.

[1] We note that an NQF-endorsed bloodstream infection measure (NQF#1460) exists.
[2] We note that a related measure utilizing the results of this survey has been NQF-endorsed (#0258). It is our intention to use this measure in future years of the ESRD QIP. We believe that a reporting measure is a necessary step in reaching our goal to implement NQF#0258.
[3] We note that this measure is based upon a current NQF-endorsed serum phosphorous measure (#0255), and a calcium monitoring measure that NQF had previously endorsed (#0261).
+ Indicates a measure we are proposing to revise for PY 2016 and future years of the ESRD QIP.

TABLE 7—NEW MEASURES PROPOSED FOR THE PY 2016 ESRD QIP AND FUTURE PAYMENT YEARS

NQF No.	Measure title
N/A	Anemia of chronic kidney disease: Patient Informed Consent for Anemia Treatment.
N/A[1]	Use of Iron Therapy for Pediatric Patients Reporting.
1454	Proportion of Patients with Hypercalcemia.
N/A[2]	NHSN Bloodstream Infection in Hemodialysis Outpatients.
N/A[3]	Comorbidity Reporting.

[1] We note that the NQF has previously endorsed a pediatric iron therapy measure (#1433) upon which this measure is based.
[2] We note that the NQF has previously endorsed a National Healthcare Safety Network (NHSN) bloodstream infection measure (#1460) upon which this measure is based.
[3] We note that the NQF has previously endorsed risk-adjusted hospitalization and mortality measures (#1463 and #0369). The proposed Comorbidity reporting measure may assist in calculating performance on these measures, should we propose to adopt them in the future.

1. PY 2015 Measures Continuing in PY 2016 and Future Payment Years

We are continuing using six measures adopted in the CY 2013 ESRD PPS final rule for the PY 2016 ESRD QIP and future payment years of the program. We are also continuing to use two measure topics adopted. Proposals for scoring these measures are discussed in sections III.C.5 through III.C.11 and III.C.13. For the reasons stated in the CY 2012 ESRD PPS final rule (76 FR 70262, 70264 through 70265, 70269) and in the CY 2013 ESRD PPS final rule (77 FR 67478 through 67480, 67487 through 67490), we will continue using:

1. (i) The Hemoglobin Greater than 12 g/dL measure.

The Dialysis Adequacy measure topic, which is comprised of

2. (a) Hemodialysis Adequacy Clinical Performance Measure III: Hemodialysis Adequacy—HD Adequacy—Minimum Delivered Hemodialysis Dose (NQF #0249),

3. (b) Peritoneal Dialysis Adequacy Clinical Performance Measure III—Delivered Dose of Peritoneal Dialysis Above Minimum (NQF #0318); and

4. (c) Minimum spKt/V for Pediatric Hemodialysis Patients (NQF #1423); and

The Vascular Access Type measure topic, which is comprised of

5. (a) Vascular Access Type: Arterial Venous (AV) Fistula (NQF #0257); and

6. (b) Vascular Access Type: Catheter >= 90 days (NQF #0256).

The technical specifications for these measures can be found at: *http://www.dialysisreports.org/ESRDMeasures.aspx*.

2. Proposal To Expand One PY 2015 Measure and Revise Two PY 2015 Measures for PY 2016 and Subsequent Payment Years

As stated earlier, we believe it is important to continue using measures from one payment year to the next payment year of the program to encourage continued improvements in patient care. Therefore, we are proposing to expand and revise the measures discussed below that we finalized in the CY 2013 ESRD PPS final rule. For all measures except for ICH CAHPS reporting measure, these proposed and revised requirements would apply to the measures for PY 2016 and future payment years. For the ICH CAHPS measure, certain proposed expanded requirements would apply to PY 2016, and some additional proposed requirements would apply to PY 2017 and future payment years.

a. Proposed Expanded ICH CAHPS Reporting Measure

Patient-centered experience is an important measure of the quality of patient care. It is a component of the National Quality Strategy. The NQF endorses and the Measures Application Partnership supports a clinical measure on this topic, NQF #0285: CAHPS In-Center Hemodialysis Survey, which is based on how facilities perform on the CAHPS survey. In PY 2015, we continued to use a reporting measure related to the ICH CAHPS survey, requiring that facilities attest they had administered the survey according to the specifications set by the Agency for Healthcare Research and Quality (AHRQ), but not requiring the submission of survey data. We required that facilities attest by January 31, 2014 to administering the ICH CAHPS survey during the performance period (77 FR 67480 through 67481).

We are taking several steps to develop the baseline data necessary to propose and implement NQF #0258 as a clinical measure in the PY 2018 ESRD QIP. We expect to be able to certify ICH CAHPS survey vendors beginning in early CY 2014. We are also building the capacity to accept survey data, developing detailed specifications for administering the ICH–CAHPS survey in light of questions vendors asked about previous procedures, and developing specifications for submitting data to CMS, such as file specifications, structure and instructions that the survey vendors will use. We have taken these steps in order to make it possible for facilities to contract with third party vendors to transfer survey data results to CMS, so that we might collect the baseline data necessary to propose and implement NQF #0258.

For PY 2016, we are proposing that each facility arrange by July 2014 for a CMS-approved vendor to conduct the

ICH CAHPS survey according to CMS (rather than AHRQ) specifications, available at the ICH CAHPS Web site (*https://ichcahps.org*). Facilities will need to register on the *https://ichcahps.org* Web site in order to authorize the CMS-approved vendor to administer the survey and submit data on their behalf. Each facility must then administer (via its vendor) the survey once during the proposed performance period and, by 11:59 ET on January 28, 2015, report the survey data to CMS using the specifications on the ICH CAHPS Web site.

For PY 2017 and subsequent payment years, we are proposing similar requirements except that each facility must arrange to have the survey administered twice during each performance period and must report the data (via its CMS-approved vendor) to CMS by the date specified on the ICH CAHPS Web site.

Although we have required that other types of providers, including home health agencies and acute care hospitals, administer and submit CAHPS survey data on a monthly, continuous basis, we recognize that there are generally low rates of turnover in dialysis facility patient populations. For this reason, we do not see the same need to require facilities to administer the survey as frequently and, as proposed above, would require facilities to administer the survey once during the performance period for PY 2016 (in order to allow facilities enough time to select a vendor) and twice for subsequent payment years. We believe that this frequency of survey administration will enable us to gather sufficient data to adopt in future rulemaking, a clinical version of this measure without unduly burdening facilities. We request comment on this proposal. The technical specifications for this measure are located at *http://www.dialysisreports.org/pdf/esrd/public-measures/ICHCAHPS-2016NPRM.pdf.*

b. Proposed Revised Mineral Metabolism Reporting Measure

Adequate management of bone mineral metabolism and disease in ESRD patients continues to be a high priority because it can cause severe consequences such as osteoporosis, osteomalacia, and hyperparathyroidism. The PY 2015 ESRD QIP has a reporting measure focused on mineral metabolism (77 FR 67484 through 67487). We are proposing two changes for PY 2016 and future payment years. First, when we finalized the measure in the CY 2013 ESRD PPS final rule, we inadvertently excluded home peritoneal patients from the measure specifications. For PY 2016 and future payment years, we are now proposing to include home peritoneal patients in the Mineral Metabolism reporting measure. Therefore, we are proposing that a qualifying case for this measure will be defined as (i) an in-center Medicare patient who had been treated at least seven times by the facility; and (ii) a home dialysis Medicare patient for whom the facility submitted a claim at least once per month.

Second, if the proposed Hypercalcemia clinical measure (described below) is finalized based on public comment, then we believe it would be redundant, and unduly burdensome, for facilities to also continue reporting serum calcium levels as part of the mineral metabolism reporting measure. Accordingly, in light of our proposal to adopt the hypercalcemia measure, we are proposing to change the specifications for the mineral metabolism measure such that it no longer requires facilities to report serum calcium levels. We welcome comments on this proposal, and in particular on whether we should retain the reporting of serum calcium levels as part of the mineral metabolism reporting measure if we do not finalize the proposed hypercalcemia measure.

As described in more detail below (Proposed Minimum Data for Scoring Measures), we are also proposing to eliminate the 11-case minimum for this measure, which was finalized in the CY 2013 ESRD PPS final rule at 77 FR 67486. Because of the proposed revised case minimum, and because there are circumstances that might make it challenging for a facility to draw a sample from certain patients, such as those who are admitted to hospital during the month, we are proposing that, in order to receive full points on this measure, facilities that treat 11 or more qualifying cases over the entire performance period will have to report at the lesser of the 50th percentile of facilities in CY 2013 or 97 percent per month, on a monthly basis, for each month of the performance period. We are further proposing that facilities that treat fewer than 11 qualifying cases during the performance period will have to report on a monthly basis the specified levels for all but one qualifying case. If a facility only has one qualifying case during the entire performance period, a facility will have to attest to that fact in CROWNWeb by January 31 of the year following the performance period in order to avoid being scored on the measure. We make this proposal because we seek to ensure the highest quality of care regardless of facility size, and because we seek to mitigate cherry-picking by ensuring that one patient does not skew a facility's score (77 FR 67474).

We welcome comments on this proposal. Technical specifications for this proposed measure can be found at: *http://www.dialysisreports.org/pdf/esrd/public-measures/MineralMetabolism-Hypercalcemia-2016NPRM.pdf.*

c. Proposed Revised Anemia Management Reporting Measure

Section 1881(h)(2)(A)(i) requires "measures on anemia management that reflect the labeling approved by the Food and Drug Administration (FDA) for such management." In the CY 2013 ESRD PPS final rule, we finalized an Anemia Management reporting measure for the reasons stated in that final rule (77 FR 67491 through 67495). However, we inadvertently excluded home peritoneal patients from the measure specifications. For PY 2016 and future payment years, we are now proposing to include home peritoneal patients in the Anemia Management reporting measure. Therefore, we are proposing that a qualifying case for this measure will be defined as (i) an in-center Medicare patient who had been treated at least seven times by the facility; and (ii) a home dialysis Medicare patient for whom the facility submitted a claim at least once per month.

We believe that there are circumstances that might make it challenging to draw a sample from certain patients, and therefore, we are proposing that, in order to receive full points on this measure, facilities that treat 11 or more qualifying cases over the entire performance period must report at the lesser of the 50th percentile of facilities in CY 2013 or 99 percent per month, on a monthly basis for each month of the performance period. In addition, we are proposing that, in order to receive full points on this measure, facilities that treat fewer than 11 qualifying cases during the performance period must report on a monthly basis the specified levels for all but one qualifying case. If a facility only has one qualifying case during the entire performance period, a facility will have to attest to that fact in CROWNWeb by January 31 of the year following the performance period in order to avoid being scored on the measure. We make this proposal because we seek to ensure the highest quality of care regardless of facility size, and because we seek to mitigate cherry-picking by ensuring that one patient does not skew a facility's score (77 FR 67474).

Technical specifications for this proposed measure can be found at: *http://www.dialysisreports.org/pdf/esrd/*

public-measures/AnemiaManagement-Reporting-2016NPRM.pdf. We request comment on this proposal to revise the Anemia Management reporting measure.

3. New Measures Proposed for PY 2016 and Subsequent Payment Years of the ESRD QIP

As the program evolves, we believe it is important to continue to evaluate and expand the measures selected for the ESRD QIP. Therefore, for the PY 2016 ESRD QIP and future payment years, we are proposing to adopt five new measures. The proposed new measures include two measures on anemia management, one measure on mineral metabolism, one measure on bloodstream infection monitoring, and one measure on comorbidities.

a. Proposed Anemia Management Clinical Measure Topic and Measures

Section 1881(h)(2)(A)(i) of the Act states that the measures specified for the ESRD QIP are required to include measures on "anemia management that reflect the labeling approved by the Food and Drug Administration for such management." For PY 2016 and future payment years, we are proposing to create a new anemia management clinical measure topic, which consists of one measure initially finalized in the PY 2012 ESRD QIP final rule and most recently finalized for PY 2015 and future PYs in the CY 2013 ESRD PPS final rule, and one new proposed measure, described below. We note that, like other measure topics, we are proposing that the Anemia Management clinical measure topic consist only of clinical and not reporting measures.

i. Anemia Management: Hgb>12

For the PY 2016 ESRD QIP and future payment years of the program, we are proposing to include the current Hgb>12 measure in a new Anemia Management Clinical Measure Topic. In the event that the Patient Informed Consent for Anemia Treatment measure described below is not finalized, we would retain the Hgb>12 measure as an independent measure. We welcome comments on this proposal.

ii. Anemia of Chronic Kidney Disease: Patient Informed Consent for Anemia Treatment

This is a measure of the proportion of dialysis patients for whom a facility attests that risks, potential benefits, and alternative treatment options for anemia were evaluated, and that the patient participated in the decision-making regarding an anemia treatment strategy. We believe that this measure is consistent with recent changes to the FDA-approved labeling[2] for ESAs and Kidney Disease: Improving Global Outcomes (KDIGO) Anemia Management Guidelines[3] that highlight the evolving understanding of risks associated with ESA therapy, as required in section 1881(h)(2)(A)(i) of the Act. We believe it is appropriate for facilities and physicians to ensure that steps are taken to make patients aware of those potential risks within the context of treatment for anemia. For these reasons, we are proposing to adopt this measure (Anemia of Chronic Kidney Disease: Patient Informed Consent for Anemia Treatment) for the ESRD QIP in PY 2016 and future payment years of the program. In order to meet the requirements of this proposed measure, facilities must attest in CROWNWeb for each qualifying patient, on an annual basis, that informed consent was obtained from that patient, or that patient's legally authorized representative, during the performance period. We propose that qualifying cases for this measure would be defined as patients who received dialysis in the facility for 30 days or more. The proposed deadline for reporting these attestations for the PY 2016 ESRD QIP will be January 31, 2015 or, if that is not a regular business day, the first business day thereafter. Missing attestation data for a patient will be interpreted as failure to obtain informed consent from that patient.

We welcome comments on this proposed measure. Technical specifications for this proposed measure can be found at: *http://www.dialysisreports.org/pdf/esrd/public-measures/AnemiaManagement-InformedConsent-2016NPRM.pdf.*

b. Hypercalcemia

Section 1881(h)(2)(A)(iii)(II) of the Act states that the measures specified for the ESRD QIP shall include other measures as the Secretary specifies, including, to the extent feasible, measures of bone mineral metabolism. Abnormalities of bone mineral metabolism are exceedingly common, and contribute significantly to morbidity and mortality in patients with advanced Chronic Kidney Disease (CKD). Many studies have associated disorders of mineral metabolism with mortality, fractures, cardiovascular disease, and other morbidities. Therefore, we believe it is critical to adopt a clinical measure that encourages adequate management of bone mineral metabolism and disease in ESRD patients.

Elevated serum calcium level (or hypercalcemia) has been shown to be significantly associated with increased all-cause mortality in patients with advanced Chronic Kidney Disease (CKD). Both KDIGO Clinical Practice Guideline for the Diagnosis, Evaluation, Prevention, and Treatment of Chronic Kidney Disease—Mineral and Bone Disorder (CKD—MBD) and the National Kidney Foundation's Kidney Disease Outcomes Quality Initiative (KDOQI) support maintaining serum calcium levels within reference ranges. Hypercalcemia is also a proxy for vascular and/or valvular calcification[4][5] and subsequent risk for cardiovascular deaths. We previously proposed a hypercalcemia clinical measure for the PY 2015 ESRD QIP (77 FR 40973 through 40974), but decided not to finalize the measure because we lacked baseline data that could be used to calculate performance standards, achievement thresholds, and benchmarks (77 FR 67490 through 67491). We now possess enough baseline data to calculate these values. Therefore, we are proposing to adopt the NQF-endorsed measure NQF #1454: Proportion of Patients with Hypercalcemia, for PY 2016 and future payment years of the ESRD QIP.

The proposed Hypercalcemia measure assesses the number of patients with uncorrected serum calcium greater than 10.2 mg/dL for a 3-month rolling average. ("Uncorrected" means not corrected for serum albumin concentration.) In order to enable us to calculate this measure, each facility will be required to enter in CROWNWeb, on a monthly basis, an uncorrected calcium level for each in-center and home dialysis patient over the age of eighteen.

Performance on this measure is expressed as a proportion of patient-months for which the 3-month rolling average exceeds 10.2 mg/dL. The numerator is the total number of eligible patient-months where the 3-month rolling average is greater than 10.2 mg/dL and the demoninator is the total number of eligible patient-months. We are proposing that facilities would begin to submit data on this measure based on January 2014 uncorrected serum

[2] *http://www.fda.gov/Drugs/DrugSafety/ucm259639.htm.*

[3] Kidney Disease: Improving Global Outcomes (KDIGO) Anemia Work Group. KDIGO Clinical Practice Guideline for Anemia in Chronic Kidney Disease. Kidney inter., Suppl. 2012 (2): 279–335.

[4] Wang A, Woo J, Law C, et al. Cardiac Valve Calcification as an Important Predictor for All-Cause Mortality and Cardiovascular Mortality in Long-Term Peritoneal Dialysis Patients: A Prospective Study. J Am. S. Nephrology 2011 (14/1): 159–168.

[5] Wang A, Ho S, Wang M, et al. Cardiac Valvular Calcification as a Marker of Atherosclerosis and Arterial Calcification in End-stage Renal Disease. JAMA 2005 (165/3): 327–332.

calcium levels but that we would calculate the first 3-month rolling average for each eligible patient in March 2014 using January, February, and March 2014 data. We would then calculate a new 3-month rolling average each successive eligible patient-month (April through December measure calculations) by dropping the oldest month's data and using instead the newest month's data in the 3-month period. The facility's performance will be determined by calculating the proportion of the 3-month averages calculated monthly (March through December, each time using the latest three months of data) for all eligible patients that was greater than 10.2 mg/dL.

Because we are proposing to adopt this measure not only for PY 2016, but also subsequent payment years, we also propose that, beginning with the PY 2017 program, we would measure hypercalcemia beginning in January of the applicable performance period. This will allow us to have a 3-month rolling average for all months in the performance period. We propose that the 3-month rolling average rate for January would be calculated using the rates from November and December of the previous year as well as January of that year. Likewise, we propose that the rate for February would be calculated using the rates from December, January and February to calculate the 3-month rolling average, and so on.

Technical specifications for this measure can be found at *http://www.dialysisreports.org/pdf/esrd/public-measures/MineralMetabolism-Hypercalcemia-2016NPRM.pdf.* We welcome comments on this proposal.

c. Use of Iron Therapy for Pediatric Patients Reporting Measure

Section 1881(h)(2)(A)(i) states that the ESRD QIP must include measures on "anemia management that reflect the labeling approved by the Food and Drug Administration for such management." Appropriate anemia management requires the presence of sufficient stores of iron.[6] Iron deficiency is a leading cause of non-response to ESA therapy, and several studies suggest that providing oral or IV iron is effective in correcting iron deficiency in the pediatric population.[7] [8] Pediatric patients have previously been excluded from all anemia management measures, limiting the participation of dialysis facilities with substantial numbers of pediatric patients in the ESRD QIP. In an effort to address this issue, and account for the quality of care dialysis facilities provide to pediatric patients, we are proposing to adopt a pediatric iron therapy measure for the ESRD QIP in PY 2016 and future payment years of the program.

We considered proposing an NQF-endorsed clinical measure on the use of iron therapy for pediatric patients as part of the proposed Anemia Management clinical measure topic (NQF #1433: Use of Iron Therapy for Pediatric Patients). This measure is an assessment of the percentage of all pediatric hemodialysis and peritoneal dialysis patients who received IV iron or were prescribed oral iron within three months of attaining the following conditions: (i) Patient had hemoglobin less than 11.0 g/dL; (ii) patient had simultaneous values of serum ferritin concentration less than 11.0; and (iii) patient's transferrin saturation (TSAT) was less than 20 percent. Upon investigation, we discovered that there were not enough patients who would qualify for this measure to establish reliable baseline data that would allow us to propose to adopt this measure as a clinical measure for PY 2016. We also note that the clinical measure currently presents other issues related to the minimum number of cases that would need to be reported for scoring, and we are considering the use of an adjuster that could be applied where the sample size is small. While we continue to consider these and other issues related to the adoption of a pediatric iron therapy clinical measure, we are proposing a related reporting measure for PY 2016 and future payment years in order to acquire a sufficient amount of baseline data for the development of a clinical measure in the future.

For PY 2016 and future payment years, we are proposing that facilities must enter in CROWNWeb on a quarterly basis, for each qualifying case (defined in the next sentence): (i) Patient admit/discharge date; (ii) hemoglobin levels; (iii) serum ferritin levels; (iv) TSAT percentages; (v) the dates that the lab measurements were taken for items (ii)–(iv); (vi) intravenous IV iron received or oral iron prescribed (if applicable); and (vii) the date that the IV iron was received or oral iron was prescribed (if applicable). We are proposing that qualifying cases for this measure would be defined as in-center and home dialysis patients under the age of eighteen.

As described in more detail below, we are proposing that each facility must report data on the Use of Iron Therapy for Pediatric Patients measure if it treats one or more qualifying cases during the performance period. Because this reporting measure requires that a facility enter data in CROWNWeb only once per quarter for each patient, we believe that the burden is appropriate and will not unduly impact small facilities, since it is proportionate to the number of patients that facilities treat. However, for the same reasons stated in the final description of the PY 2014 ESRD QIP Mineral Metabolism measure (which had a one patient minimum) (77 FR 67472 through 67474), we are proposing that, in order to receive full points on this measure, facilities that treat 11 or more qualifying cases over the performance period will have to report at the lesser of the 50th percentile of facilities in CY 2013 or 97 percent per quarter, for each quarter of the performance period. We are proposing that facilities that treat fewer than 11 qualifying cases during the performance period will have to report on a quarterly basis the specified data elements for all but one qualifying case. If a facility only has one qualifying case during the entire performance period, a facility will have to attest to that fact in CROWNWeb by January 31 of the year following the performance period in order to avoid being scored on the measure.

The technical specifications for this measure can be found at: *http://www.dialysisreports.org/pdf/esrd/public-measures/AnemiaManagement-PediatricIronTherapyReporting-2016NPRM.pdf.* We welcome comment on this proposal.

d. NHSN Bloodstream Infection in Hemodialysis Outpatients Clinical Measure

Healthcare-acquired infections (HAI) are a leading cause of preventable mortality and morbidity across different settings in the healthcare sector, including dialysis facilities. Bloodstream infections are a pressing concern in a population where individuals are frequently immuno-compromised and depend on regular vascular access to facilitate dialysis therapy. In a national effort to reduce infection rates, CMS has partnered with the CDC to encourage facilities to report to the NHSN as a way to track and facilitate action intended to reduce HAIs. The NHSN is a secure, internet-based surveillance system that is managed by the Division of Healthcare

[6] Seeherunvong W, Rubio L, Abitbol CL, et al. Identification of poor responders to erythropoietin among children undergoing hemodialysis. J Pediatr 2001 (138/5):710–714.

[7] Warady BA, Zobrist RH, Wu J, Finan E. Sodium ferric gluconate complex therapy in anemic children on hemodialysis. Pediatr Nephrol 20: 1320–7, 2005.

[8] Frankenfield DL, Neu AM, Warady BA, et al. Anemia in pediatric hemodialysis patients: Results from the 2001 Clinical Performance Measures Project. Kidney International 64:1120–4, 2003.

Quality Promotion at the CDC. NHSN has been operational since 2006 and tracks data from acute care hospitals, long-term care hospitals, psychiatric hospitals, rehabilitation hospitals, outpatient dialysis centers, ambulatory surgery centers, and long-term care facilities. We continue to believe that accurately reporting dialysis events to the NHSN by these facilities supports national goals for patient safety, particularly goals for the reduction of HAIs. In addition, we believe that undertaking other activities designed to reduce the number of HAIs supports national goals for patient safety. For further information regarding the NHSN's dialysis event reporting protocols, please see *http://www.cdc.gov/nhsn/dialysis/index.html.*

We have worked over the past two years to help dialysis facilities become familiar with the NHSN system through the adoption of an NHSN Dialysis Event reporting measure. We now believe that facilities are sufficiently versed in reporting this measure to the NHSN. In light of the importance of monitoring and preventing infections in the ESRD population, and because a clinical measure would have a greater impact on clinical practice by holding facilities accountable for their actual performance, we are proposing to replace the NHSN Dialysis Event reporting measure that we adopted in the CY 2013 ESRD PPS final rule (77 FR 67481 through 67484) with a new clinical measure for PY 2016 and future payment years. This proposed measure, NHSN Bloodstream Infection in Hemodialysis Outpatients, is based closely NQF #1460, in that it evaluates the number of hemodialysis outpatients with positive blood cultures per 100 hemodialysis patient-months.

We are proposing that facilities must submit 12 months of accurately reported dialysis event data (defined in the next sentence) to NHSN on a quarterly basis. In order to ensure that a facility submits data that can be used to identify the source of bloodstream infections, to preserve the internal validity of bloodstream infection data, and to help prevent future bloodstream infections, we propose to define accurately reported dialysis event data as data reported by facilities that follow the NHSN enrollment and training guidelines specified by the CDC (available at: *http://www.cdc.gov/nhsn/dialysis/enroll.html* and *http://www.cdc.gov/nhsn/Training/dialysis/index.html*), according to the reporting requirements specified within the NHSN Dialysis Event Protocol. (This protocol, which facilities are already using to meet the requirements of the NHSN Dialysis Event reporting measure, includes information about IV antimicrobial starts and evidence of vascular access site infection, as well as information about the presence of a bloodstream infection.)

Additionally, we are proposing that each quarter's data would be due 3 months after the end of that quarter. For example, data from January 1 through March 31, 2014 would need to be entered by June 30, 2014; data from April 1 through June 30, 2014 would need to be submitted by September 30, 2014; data from July 1 through September 30, 2014 would need to be submitted by December 31, 2014; data from October 1 through December 31, 2014 would need to be submitted by March 31, 2015. If facilities do not report 12 months of these data according to the requirements and the deadlines specified above, we propose that they would receive a score of zero on the measure. We also propose that facilities with a CCN open date after January 1, 2014 will be excluded from the measure. We note that in previous payment years we have awarded partial credit to facilities that submitted less than twelve months of data to encourage them to enroll in and report data in the NHSN system. However, we are proposing to require 12 months of data on this clinical measure because infection rates vary through different seasons of the year.

We note that this proposed measure only applies to facilities treating in-center hemodialysis patients (both adult and pediatric). We will determine whether a facility treats in-center patients by referencing the facility's information in the Standard Information Management System and CROWNWeb.

We recognize that the CDC has published Core Interventions for BSI Prevention in Dialysis, which are listed at *http://www.cdc.gov/dialysis/prevention-tools/core-interventions.html.* We encourage facilities to adopt the nine listed interventions in order to help prevent infections, but are not proposing to require facilities to adopt any of these interventions at this time.

We request comment on this proposal, and in particular on the issue of whether it is appropriate at this time to convert the current NHSN Dialysis Event Reporting measure into a clinical measure. The technical specifications for this measure are located at *http://www.dialysisreports.org/ESRDMeasures.aspx.*

e. Comorbidity Reporting Measure

The NQF endorsed a clinical measure for Dialysis Facility Risk-Adjusted Standardized Mortality Ratio (#0369) in 2008, and a clinical measure for Standardized Hospitalization Ratio for Admissions (#1463) in 2011. We have long been interested in adding a Standardized Mortality Ratio (SMR) measure and a Standardized Hospitalization Ratio (SHR) measure to the ESRD QIP. As articulated in the CY 2013 ESRD PPS final rule, "We believe that dialysis facilities own partial responsibility for the rate at which their patients are hospitalized, in particular when that rate is substantially higher than at other peer facilities and may not be explained by variation in the illness of patients" (77 FR 67496). Similarly, we continue to believe that the "SMR may help distinguish the quality of care offered by dialysis facilities as determined by mortality, a key health care outcome used to assess quality of care in other settings, such as hospitals" (77 FR 67497).

Although we believe that SHR and SMR capture important indicators of morbidity and mortality, we are considering whether, and how, we might be able to adopt them through future rulemaking in a way that properly takes into account the effect that comorbidities have on hospitalization and mortality rates for the ESRD population. We also acknowledge concerns raised by commenters in the past that the NQF-endorsed SMR and SHR measures are not adequately risk adjusted (77 FR 67496). Currently, information about patient comorbidities is collected by CMS via the Medical Evidence Reporting Form 2728, which is typically only submitted by facilities to CMS when a new patient first begins to receive dialysis treatment. We also use Form 2728 to capture the date of first dialysis in order to help determine patient exclusions for all of the clinical measures finalized in the PY 2013 ESRD PPS final rule. However, facilities are not required to update this form, which makes it difficult to capture information about comorbidities that develop after the initiation of dialysis treatment. We acknowledge the concerns of commenters who stated that "there is currently no mechanism either for correcting or updating patient comorbidity data on CMS' Medical Evidence Reporting Form 2728, and these comorbidities affect the calculation of the measure" (76 FR 70267).

We are proposing to adopt a Comorbidity reporting measure for the PY 2016 ESRD QIP and future payment years of the ESRD QIP. The purpose of this measure is two-fold. First, the proposed reporting measure offers a

mechanism for collecting annual information about patient comorbidities, thereby providing a reliable source of data that we can use to develop a risk-adjustment methodology for the SHR and SMR clinical measures, should we propose to adopt such measures in the future. Second, the reporting measure will make it possible to improve our understanding of the risk factors that contribute to morbidity and mortality in the ESRD patient population. The data we gather will enable us to develop risk-adjustment methodologies for possible use in calculating the SHR and SMR measures, should we propose to adopt those measures in the future, and therefore more reliably calculate expected hospitalization and mortality rates in future payment years of the ESRD QIP. When we examine updated data on comorbidities, we will determine the appropriateness of including that data as additional risk-adjustment factors for the SMR and SHR measures by considering the extent to which each comorbidity may be influenced by the quality of dialysis facility care, as opposed to factors outside of a facility's control.

Section 1881(h)(2)(B)(i) of the Act requires that, unless the exception set forth in section 1881(h)(2)(B)(ii) of the Act applies, the measures specified for the ESRD QIP under section 1881(h)(2)(A)(iii) of the Act must have been endorsed by the entity with a contract under section 1890(a) of the Act (which is currently NQF). Under the exception set forth in section 1881(h)(2)(B)(ii) of the Act, in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed, so long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

NQF has not endorsed a measure for updating comorbidity information for patients with ESRD. We have given due consideration to endorsed measures, as well as those adopted by a consensus organization, and we are proposing this measure under the authority of 1881(h)(2)(B)(ii) of the Act. We believe that the proposed measure's potential to improve clinical understanding and practice outweighs the minimal burden it would impose upon facilities. Additionally, we believe that this measure will provide data that is currently unavailable through Form 2728 because the measure accounts for the most recent information about patient risk factors, which may change over time as a patient continues receiving dialysis.

For this proposed reporting measure, we are proposing each facility will annually update in CROWNWeb up to 24 comorbidities, or indicate "none of the above," for each qualifying case. For the purposes of this measure, we are proposing to define a "qualifying case" as a hemodialysis or peritoneal dialysis patient being treated at the facility as of December 31 of the performance period, according to admit and discharge dates entered into CROWNWeb. In fulfilling this reporting requirement, facilities would select one or more of the following for each qualifying case:

- Congestive heart failure.
- Atherosclerotic heart disease (ASHD).
- Other cardiac disease.
- Cerebrovascular disease (CVA, TIA).
- Peripheral vascular disease.
- History of hypertension.
- Amputation.
- Diabetes, currently on insulin.
- None of the above.
- Diabetes, on oral medications.
- Diabetes, without medications.
- Diabetic retinopathy.
- Chronic obstructive pulmonary disease.
- Tobacco use (current smoker).
- Malignant neoplasm, Cancer.
- Toxic nephropathy.
- Alcohol dependence.
- Drug dependence.
- Inability to ambulate.
- Inability to transfer.
- Needs assistance with daily activities.
- Institutionalization—Assisted Living.
- Institutionalization—Nursing Home.
- Institutionalization—Other Institution.
- Non-renal congenital abnormality.

Therefore, to receive full points on this measure, we are proposing that facilities would be required to provide the updates in CROWNWeb by January 31, 2015 or, if that is not a regular business day, the first business day thereafter. While we are proposing to require facilities to report a single annual update per patient, we encourage facilities to update this information more frequently, in order to more closely monitor their patients' risk factors, and to improve the quality of the data.

Technical specifications for this proposed measure can be found at *http://www.dialysisreports.org/pdf/esrd/public-measures/ComorbidityReporting-2016NPRM.pdf*. We welcome comments on these proposals.

4. Other Measures Under Development

As part of our effort to continuously improve the ESRD QIP, we continue to work on developing additional robust measures that provide valid assessments of the quality of care furnished by facilities to patients with ESRD. We are considering the feasibility of developing quality measures in other topic areas (for example, blood transfusions, kidney transplantation, quality of life, and health information technology) for quality improvement at the point of care as well as for the electronic exchange of information in support of care coordination across providers and settings. Additional areas of potential interest include residual renal function, complications associated with ESRD, and frequently comorbid conditions (for example, diabetes and heart disease). We request comment on these potential areas of future measurement, and welcome suggestions on other topics for measure development.

5. Proposed Scoring for the PY 2016 ESRD QIP and Future Payment Years

Section 1881(h)(3)(A)(i) of the Act requires the Secretary to develop a methodology for assessing the total performance of each facility based on the performance standards established with respect to the measures selected for the performance period. We believe that the methodology set forth in the CY 2013 ESRD PPS final rule incentivizes facilities to meet the goals of the ESRD QIP; therefore, with the exception of the proposed changes further discussed in the applicable section below, we are proposing to adopt a scoring methodology for the PY 2016 ESRD QIP and future payment years that is nearly identical to the one finalized in the CY 2013 ESRD PPS final rule. To the extent that the scoring methodology differs, those differences are proposed below.

6. Proposed Performance Period for the PY 2016 ESRD QIP

Section 1881(h)(4)(D) of the Act requires the Secretary to establish the performance period with respect to a year, and that the performance period occur prior to the beginning of such year. In the CY 2013 ESRD PPS final rule, we finalized a performance period of CY 2013. We stated our belief that, for most measures, a 12-month performance

period is the most appropriate for the program because this period accounts for any potential seasonal variations that might affect a facility's score on some of the measures, and also provides adequate incentive and feedback for facilities and Medicare beneficiaries. For the reasons outlined in the CY 2013 ESRD PPS final rule (77 FR 67500), we have determined for PY 2016 that CY 2014 is the latest period of time during which we can collect a full 12 months of data and still implement the payment reductions beginning with renal dialysis services furnished on January 1, 2016. Therefore, for the PY 2016 ESRD QIP, we are proposing to establish CY 2014 as the performance period for all of the measures. We welcome comments on this proposal.

7. Proposed Performance Standards for the PY 2016 ESRD QIP and Future Payment Years

We are proposing to adopt performance standards for the PY 2016 ESRD QIP measures that are similar to what we finalized in the CY 2013 ESRD PPS final rule. Section 1881(h)(4)(A) provides that "the Secretary shall establish performance standards with respect to measures selected . . . for a performance period with respect to a year." Section 1881(h)(4)(B) of the Act further provides that the "performance standards . . . shall include levels of achievement and improvement, as determined appropriate by the Secretary." We use the performance standards to establish the minimum score a facility must achieve to avoid a Medicare payment reduction.

a. Proposed Clinical Measure Performance Standards

For the same reasons stated in the CY 2013 ESRD PPS final rule (77 FR 67500 through 76502), we are proposing for PY 2016 to set the performance standards (both achievement and improvement) based on the national performance rate (that is, the 50th percentile) of facility performance in CY 2012, except as specified below.

With respect to the proposed NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure, we are proposing to begin data collection beginning with CY 2014 events. We do not have data prior to CY 2014 for purposes of setting a performance standard based on the national performance rate of facility performance in CY 2012. For that reason, we are proposing that the performance standard for the NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure for PY 2016 be the 50th percentile of the national performance rate on the measure during CY 2014. Because we lack the baseline data needed to calculate an improvement score, we are also proposing that, for PY 2016, facilities be scored only on achievement for this measure, and not on the basis of improvement. Although we recognize that with other measures that lacked baseline data we instituted a reporting measure to ensure that both an achievement and improvement score could be assessed, we believe that it is appropriate, in this case, to adopt a clinical measure without the baseline data necessary for an improvement score. Hospital Acquired Infections (HAIs) are a leading cause of preventable mortality and morbidity across different settings in the healthcare sector, including dialysis facilities, costing patient lives and billions of dollars. CMS has recognized that reducing HAIs is critically important to the Agency's three main goals of improving healthcare, improving health, and reducing healthcare costs. Because of the abnormally great impact HAIs have upon patients and the healthcare industry, we believe it is important to begin assessing facilities on the number of these events as soon as possible, rather than on merely whether they report these events. Additionally, the NHSN measure has been a reporting measure since PY 2014, which will give facilities two years to report data before they are scored on the data results. Thus, although we do not yet have complete baseline data to give improvement scores in PY 2016, we believe it is appropriate to implement this measure using only achievement scores because of the urgency in reducing these events and the time facilities have had to prepare themselves for such a measure. Finally, we are proposing that facilities would receive a score of zero on the NHSN clinical measure if they do not submit 12 months of data, as defined in Section III.C.3.d above, and by the deadlines specified in Section III.C.3.d above.

For the proposed Patient Informed Consent for Anemia Treatment, we believe that facilities should meet the standard 100 percent of the time. However, we recognize that unexpected events might make a 100 percent standard difficult to meet, so we are proposing that facilities should be allowed to meet the standard for less than 100 percent of their patients. Because prior data are unavailable for the establishment of a performance standard, benchmark, and achievement threshold, we developed a methodology to determine appropriate achievement standards. As described in Section III.C.10, we are proposing that a small facility adjuster will be applied to facilities with between 11 and 25 qualifying patients. Since facilities with between 11 and 25 patients would be subject to the favorable scoring modifications applied by the small facility adjuster, these facilities would have an easier time achieving the proposed achievement standards. Therefore, the minimum number of cases a facility may have and not benefit from a small facility adjuster is 26. We calculated that if a facility with 26 cases failed to obtain consent for two qualifying cases, it would have obtained consent 92 percent of the time (rounded). If the facility failed to obtain consent for one case, it would have obtained consent 96 percent of the time (rounded). We believe that these values (92 and 96 percent) encourage a high consistency of care for patients with ESRD that is reasonably attainable by all facilities, while accounting for the possibility that facilities would be unable to obtain informed consent for reasons beyond their control. Therefore, we are proposing that the achievement threshold be defined as obtaining informed consent for 92 percent of qualifying cases during the performance period, and that the benchmark be defined as obtaining informed consent for 96 percent of such cases. Furthermore, we propose to calculate the proposed performance standard using the average of the benchmark and achievement threshold, which is 94 percent. We seek comments on this performance standard.

Because we lack the baseline data needed to calculate improvement scores for the Patient Informed Consent for Anemia Treatment measure, we are also proposing that for PY 2016, facilities be scored only on achievement for this measure, and not on the basis of improvement. We recognize that with other measures that lacked baseline data we adopted a reporting measure to ensure that both an achievement and improvement score could be assessed. However, we believe that it is appropriate, in this case, to adopt a clinical measure without the baseline data necessary for an improvement score. Anemia management is a topic highlighted in the ESRD QIP authorizing statute, requiring measures that reflect labeling approved by the Food and Drug Administration. (See section 1881(h)(2)(A) of the Act.) The inclusion of the topic in statue highlights its importance to CMS and to dialysis patients. ESA labeling has changed over time as additional safety information

has become available, and the informed consent process is designed to ensure that the most current safety information is communicated to patients before ESAs are administered. In addition, obtaining informed consent for anemia treatment is a standard of practice that should aready be in place at dialysis facilities, so facilities should already have procedures in place to support the measure. Thus, although we do not yet have complete baseline data to give improvement scores in PY 2016, we believe it is appropriate to implement this measure using only achievement scores because of the importance of providing patients with current information about the risks and benefits of anemia therapy, and because this is already a standard clinical practice.

For the proposed Hypercalcemia measure, the first month that we can use to establish the baseline is May 2012. This is because the hypercalcemia measure relies on CROWNWeb as its data source, CROWNWeb was first rolled out nationally in May 2012, and data submitted to CROWNWeb before that time is considered test or pilot data. For that reason, we are proposing to set the performance standard as the 50th percentile of national performance from May 2012 through November 2012. We seek comment on this proposal.

b. Estimated Performance Standards for Proposed Clinical Measures

At this time, we do not have the necessary data to assign numerical values to the proposed performance standards for the clinical measures, because we do not yet have all of the data from CY 2012 or the first portion of CY 2013. However, we are able to estimate these numerical values based on the most recent data available. For all of the proposed clinical measures except Hypercalcemia, this data comes from the period of January through November 2012. For the Hypercalcemia clinical measure, the most recent data available comes from the period May through November 2012. In Table 8, we have provided the estimated performance standards for all of the measures except for the NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure, which will be based on data from CY 2014. We will publish updated values for all measures except the NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure in the CY 2014 ESRD PPS final rule.

TABLE 8—ESTIMATED NUMERICAL VALUES FOR THE PERFORMANCE STANDARDS FOR THE PY 2016 ESRD QIP CLINICAL MEASURES USING THE MOST RECENTLY AVAILABLE DATA

Measure	Performance standard
Vascular Access Type:	
%Fistula	62.4%.
%Catheter	10.5%.
Kt/V:	
Adult Hemodialysis	93.6%.
Adult, Peritoneal Dialysis.	85.4%.
Pediatric Hemodialysis.	92.5%.
Anemia Management:	
Hemoglobin > 12 g/dL.	0%.
Patient Informed Consent for Anemia Treatment[1].	94%.
Hypercalcemia	2.3%.
NHSN Bloodstream Infection in Hemodialysis Outpatients.	50th percentile of eligible facilities' performance during the performance period.

[1] As noted above, the performance standard for the Patient Informed Consent for Anemia Treatment is based on clinical standards, not data collected through the ESRD QIP.

We believe that the ESRD QIP should not have lower standards than in previous years. In accordance with our statements in the CY 2012 ESRD PPS final rule (76 FR 70273), if the final numerical values for the PY 2016 performance standards are worse than PY 2015 for a measure, then we are proposing to substitute the PY 2015 performance standard for that measure. We request comments on this proposal.

c. Proposed Performance Standards for Reporting Measures

For the proposed ICH CAHPS reporting measure, we are proposing to set the performance standard for PY 2016 as the facility's successful submission, by January 28, 2015, of ICH CAHPS survey data collected during the performance period in accordance with the measure specifications to CMS as specified at *https://ichcahps.org*. For PY 2017 and future payment years, we are proposing that the PY 2016 performance standard continue, except that in each performance period, facilities are required to submit data from the two surveys conducted during the performance period, rather than one, and that the survey data must be submitted by the dates specified by CMS at *https://ichcahps.org*.

For the proposed Mineral Metabolism reporting measure, we are proposing to set the performance standard as successfully reporting the measure for the number of qualifying cases specified in Section III.C.2.b for each month of the 12-month duration of the performance period.

For the proposed Anemia Management reporting measure, we are proposing to set the performance standard as successfully reporting the measure for the number of qualifying cases specified in Section III.C.2.c for each month of the 12-month duration of the performance period.

For the proposed Anemia Management: Pediatric Iron Therapy reporting measure, we are proposing to set the performance standard as successfully reporting for each qualifying case each quarter the following: (i) Patient admit/discharge date; (ii) hemoglobin levels; (iii) serum ferritin levels; (iv) TSAT percentages; (v) the dates that the lab measurements were taken for items (ii)–(iv); (vi) intravenous IV iron prescribed or oral iron prescribed (if applicable); and (vii) the date that the IV iron or oral iron was prescribed (if applicable).

For the proposed Comorbidity reporting measure, we are proposing to set the performance standard as successfully updating in CROWNWeb at least once during the performance period for each qualifying case, the patient's comorbidities. We are further proposing that the update be entered into CROWNWeb by the January 31 following the conclusion of the performance period or, if that is not a regular business day, the first business day thereafter.

8. Proposed Scoring for the PY 2016 ESRD QIP Proposed Measures

In order to assess whether a facility has met the performance standards, we finalized a methodology for the PY 2014 ESRD QIP under which we separately score each clinical and reporting measure. We score facilities based on an achievement and improvement scoring methodology for purposes of assessing their performance on the clinical measures (76 FR 70272 through 70273). We are proposing to use a similar methodology for purposes of scoring facility performance on each of the clinical measures for the PY 2016 ESRD QIP and future payment years, except that we are proposing that there will only be an achievement score for the NHSN Bloodstream Infection in Hemodialysis Outpatients and Patient Informed Consent for Anemia Treatment clinical measures, because data are not available to calculate an improvement score.

In determining a facility's achievement score for the PY 2016

program and future payment years, we are proposing to continue using the current methodology described above, under which facilities would receive points along an achievement range based on their performance during the proposed performance period for each measure, which we define as a scale between the achievement threshold and the benchmark explained below. We are proposing to define the achievement threshold for each of the proposed clinical measures as the 15th percentile of the national performance rate during CY 2012, except as otherwise specified below for the NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure, the Patient Informed Consent for Anemia Treatment clinical measure, and Hypercalcemia clinical measure. We believe that this achievement threshold will provide an incentive for facilities to continuously improve their performance, while not reducing incentives to facilities that score at or above the national performance rate for the clinical measures (77 FR 67503). We are proposing to define the benchmark as the 90th percentile of the national performance rate during CY 2012, except as proposed below for the NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure and the Patient Informed Consent for Anemia Treatment clinical measure, because it represents a demonstrably high but achievable standard of quality that the high performing facilities reached.

For the proposed NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure, we are proposing that the achievement threshold and benchmark be the 15th and 90th percentiles, respectively, of national performance during CY 2014.

For the proposed Patient Informed Consent for Anemia Treatment clinical measure, and for the reasons described in Section III.C.7.a, we are proposing that the achievement threshold be defined as obtaining informed consent for 92 percent of qualifying cases during the performance period, and that the benchmark be defined as obtaining informed consent for 96 percent of such cases.

For the reasons described above, the first month that we can use to establish the baseline for the proposed Hypercalcemia measure is May 2012. Therefore, we are proposing to set the achievement threshold as the 15th percentile of national performance and the benchmark as the 90th percentile of national performance from May 2012 through November 2012. We request comment on these proposals.

With the exception of the NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure and the Patient Informed Consent Anemia Treatment clinical measure, we are proposing that facilities receive points along an improvement range, defined as a scale running between the improvement threshold and the benchmark. We are proposing to define the improvement threshold as the facility's performance on the measure during CY 2013. The facility's improvement score would be calculated by comparing its performance on the measure during CY 2014 (the proposed performance period) to its performance rate on the measure during CY 2013. Because we lack the baseline data needed to calculate improvement scores for the NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure and the Patient Informed Consent for Anemia Treatment clinical measure, we are proposing that facilities will not receive improvement scores for these measures for PY 2016.

Like the performance standards, we do not have the necessary data at this time to assign final numerical values to the proposed achievement thresholds and benchmarks for the clinical measures. However, we are able to estimate them based on the most recent data available. For all of the clinical measures except Hypercalcemia and NHSN Bloodstream Infection in Hemodialysis Outpatients, this data comes from the period between January 2012 and November 2012. For the Hypercalcemia clinical measure, the data comes from the period between May 2012 and November 2012. In Table 9, we have provided the estimated achievement thresholds and benchmarks for each of the measures except for NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure (which would be based on data from January 1, 2014 through December 31, 2104) and Patient Informed Consent for Anemia Treatment (for which the achievement threshold and benchmark are proposed to be 92 percent and 96 percent, respectively).

TABLE 9—ESTIMATED PROPOSED ACHIEVEMENT THRESHOLDS AND BENCHMARKS FOR THE PROPOSED PY 2016 ESRD QIP CLINICAL MEASURES USING THE MOST RECENTLY AVAILABLE DATA

Measure	Achievement threshold	Benchmark
%Fistula	49.8%	77.1%.
%Catheter	19.6%	3.0%.
Kt/V:		
Adult Hemodialysis	85.9%	97.5%.
Adult, Peritoneal Dialysis	66.7%	94.8%.
Pediatric Hemodialysis	83.3%	98.8%.
Anemia Management:		
Hemoglobin > 12 g/dL	1.2%	0%.
Patient Informed Consent for Anemia Treatment[1].	92%	96%.
Hypercalcemia	6.1%	0.2%.
NHSN Dialysis Event Reporting and Clinical Bloodstream Infection.	15th percentile of eligible facilities' performance during the performance period.	90th percentile of eligible facilities' performance during the performance period.

[1] As discussed above, the proposed achievement threshold and benchmark for the Patient Informed Consent for Anemia Treatment clinical measure are based on clinical standards, not baseline data.

We believe that the ESRD QIP should not have lower standards than previous years. In accordance with our statements in the CY 2012 ESRD PPS final rule (76 FR 70273), if the final PY 2016 numerical values for the achievement thresholds and benchmarks are worse than PY 2015 for a given measure, we are proposing to substitute the PY 2015 achievement thresholds and benchmarks for that measure. We request comments on these proposals.

a. Proposals for Scoring Facility Performance on Clinical Measures Based on Achievement

Using the same methodology we finalized in the CY 2013 ESRD PPS final rule, we are proposing to award between 0 and 10 points for each of the proposed clinical measures (77 FR 67504). As noted, we are proposing that the score for each of these clinical measures will be based upon the higher of an achievement or improvement score on each of the clinical measures, except for NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure and the Patient Informed Consent for Anemia Treatment clinical measure, which we are proposing to score on achievement alone. For purposes of calculating achievement scores for the clinical measures, we are proposing to base the score on where a facility's performance rate falls relative to the achievement threshold and the benchmark for that measure. (Performance standards do not enter into the calculation of improvement or achievement scores.) Identical to what we finalized in the CY 2013 ESRD PPS final rule, we are proposing that if a facility's performance rate during the performance period is:

- Equal to or greater than the benchmark, then the facility would receive 10 points for achievement;
- Less than the achievement threshold, then the facility would receive 0 points for achievement; or
- Equal to or greater than the achievement threshold, but below the benchmark, then the following formula would be used to derive the achievement score:

[9 * ((Facility's performance period rate − achievement threshold)/(benchmark − achievement threshold))] + .5, with all scores rounded to the nearest integer, with half rounded up.

Using this formula, a facility would receive a score of 1 to 9 points for a clinical measure based on a linear scale distributing all points proportionately between the achievement threshold and the benchmark, so that the interval in the performance between the score for a given number of achievement points and one additional achievement point is the same throughout the range of performance from the achievement threshold to the benchmark.

b. Proposals for Scoring Facility Performance on Clinical Measures Based on Improvement

Using the same methodology we have previously finalized for the ESRD QIP, we are proposing that facilities would earn between 0 and 9 points for each of the clinical measures that will have an improvement score (that is, all clinical measures except NHSN Bloodstream Infection in Hemodialysis Outpatients clinical measure and Patient Informed Consent for Anemia Treatment), based on how much their performance on the measure during CY 2014 improved from their performance on the measure during CY 2013 (77 FR 67504). A specific improvement range for each measure would be established for each facility. We are proposing that if a facility's performance rate on a measure during the performance period is:

- Less than the improvement threshold, then the facility would receive 0 points for improvement; or
- Equal to or greater than the improvement threshold, but below the benchmark, then the following formula would be used to derive the improvement score:

[10 * ((Facility performance period rate − Improvement threshold)/(Benchmark − Improvement threshold))] − .5, with all scores rounded to the nearest integer, with half rounded up.

Note that if the facility score is equal to or greater than the benchmark, then it would receive 10 points on the measure based on the achievement score methodology discussed above. We request comments on this proposal.

c. Proposals for Calculating Facility Performance on Reporting Measures

As noted above, reporting measures differ from clinical measures in that they are not scored based on clinical values; rather, they are scored based on whether facilities are successful in achieving the reporting requirements associated with each of these proposed measures. The proposed criteria that would apply to each reporting measure are discussed below.

With respect to the proposed Anemia Management reporting measure and the proposed Mineral Metabolism reporting measure, we are proposing to award points to facilities using the same formula that we finalized in the CY 2013 ESRD PPS final rule for Mineral Metabolism and Anemia Management (77 FR 67506):

$$\left(\frac{\textit{Number of Months Facility Successfully Reports}}{\textit{Number of Months in the Performance Period Facility has CCN}} \times 12\right) - 2$$

With respect to the proposed Use of Iron Therapy for Pediatric Patients reporting measure, using the following formula:

$$\frac{\textit{Number of Quarters Facility Successfully Reports}}{\textit{Number of Quarters in the Performance Period Facility has CCN}} \times 10$$

We are proposing to score the Pediatric Iron Therapy measure differently than the proposed Anemia Management reporting measure and the proposed Mineral Metabolism reporting measure because it requires quarterly rather than monthly reporting, and therefore scoring based on monthly reporting rates is not feasible.

With respect to the proposed ICH CAHPS reporting measure and Comorbidity reporting measure, we are proposing that a facility receive a score of 10 points if it satisfies the performance standard for the measure, and.0 points if it does not. We are proposing to score these reporting measures differently than the other reporting measures because these require annual or biannual reporting, and therefore scoring based on monthly or quarterly reporting rates is not feasible.

We request comment on the proposed methodology for scoring the PY 2016 ESRD QIP reporting measures.

9. Proposals for Weighting the PY 2016 ESRD QIP Measures and Calculating the PY 2016 ESRD QIP Total Performance Score

Section 1881(h)(3)(A)(iii) of the Act provides that the methodology for calculating the facility TPS shall include a process to weight the performance scores with respect to individual measures to reflect priorities for quality improvement, such as weighting scores to ensure that facilities have strong incentives to meet or exceed anemia management and dialysis adequacy performance standards, as determined appropriate by the Secretary. In determining how to appropriately weight the PY 2016 ESRD QIP measures for purposes of calculating the TPS, we considered two criteria: (1) The number of measures we are proposing to include in the PY 2016 ESRD QIP; and (2) the National Quality Strategy priorities.

a. Weighting Individual Measures To Compute Measure Topic Scores for the Kt/V Dialysis Adequacy Measure Topic, the Vascular Access Type Measure Topic, and the Anemia Management Clinical Measure Topic

In the CY 2013 ESRD PPS final rule, we established a methodology for deriving the overall scores for measure topics (77 FR 67507). For the reasons described in the CY 2013 ESRD PPS final rule, we are proposing to use the same methodology in PY 2016 and future payment years to calculate the scores for the three measure topics. After calculating the individual measure scores within a measure topic, we are proposing to calculate a measure topic score using the following steps: (i) Dividing the number of patients in the denominator of each measure by the sum of the number of patients in each denominator for all of the applicable measures in the measure topic; (ii) multiplying that figure by the facility's score on the measure; (iii) summing the results achieved for each measure; and (iv) rounding this sum (with half rounded up). We are proposing that if a facility does not have enough patients to receive a score on one of the measures in the measure topic (as discussed below), then that measure would not be included in the measure topic score for that facility. Only one measure within the measure topic needs to have enough cases to be scored in order for the measure topic to be scored and included in the calculation of the TPS. We are also proposing that the measure topic score would be equal to one clinical measure in the calculation of the TPS. For an additional explanation, see the examples provided at 77 FR 67507.

We request comment on the proposed method of weighting individual measure scores to derive a measure topic score.

b. Proposal for Weighting the Total Performance Score

We continue to believe that weighting the clinical measures/measure topics equally will incentivize facilities to improve and achieve high levels of performance across all of these measures, resulting in overall improvement in the quality of care provided to patients with ESRD. We also continue to believe that, while the reporting measures are valuable, the clinical measures evaluate actual patient outcomes and therefore justify a higher combined weight (77 FR 67506 through 67508). For the reasons outlined in the CY 2013 ESRD PPS final rule, we are proposing to continue weighting clinical measures as 75 percent and reporting measures as 25 percent of the TPS. We request comment on this proposed methodology for weighting the clinical and reporting measures.

We have also considered the issue of awarding a TPS to facilities that do not report data on the proposed minimum number of cases with respect to one or more of the measures or measure topics. For the reasons stated in the CY 2013 ESRD PPS final rule, for PY 2016 and future payment years, we are proposing to continue to require a facility to have at least one clinical and one reporting measure score to receive a TPS (77 FR 67508). We request comment on our proposals to require a facility to be eligible for a score on at least one reporting and one clinical measure in order to receive a TPS.

Finally, we are proposing that the TPSs be rounded to the nearest integer, with half of an integer being rounded up. We request comment on this proposal. For further examples regarding measure and TPS calculations, we refer readers to the figures below.

c. Examples of the Proposed PY 2016 ESRD QIP Scoring Methodology

In this section, we provide examples to illustrate the proposed scoring methodology for PY 2016. Figures 1–3 illustrate the scoring for a clinical measure. Figure 1 shows Facility A's performance on an example clinical measure. Note that for this example clinical measure, the facility has performed very well. The example benchmark (the 90th percentile of performance nationally in CY 2012) calculated for this clinical measure is 77 percent, and the example achievement threshold (which is the 15th percentile of performance nationally in CY 2012) is 46 percent. Therefore, facility A's performance of 86 percent on the clinical measure during the performance period exceeds the benchmark of 77 percent, so Facility A would earn 10 points (the maximum) for achievement for this measure. (Because, in this example, Facility A has earned the maximum number of points possible for this measure, its improvement score is irrelevant.)

Figure 1

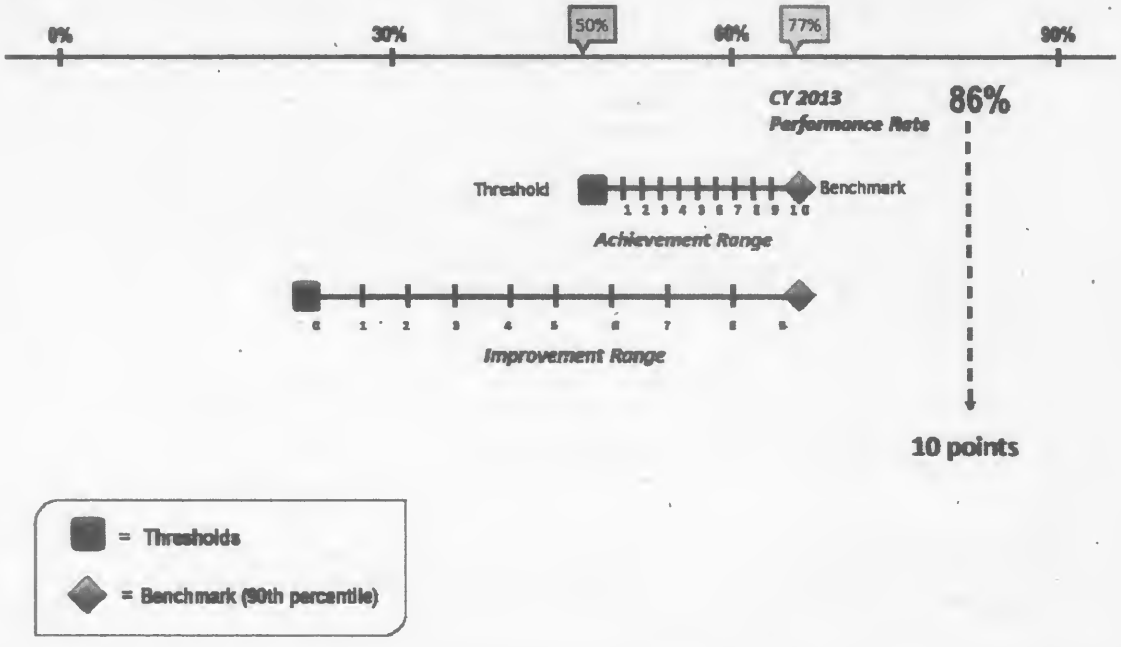


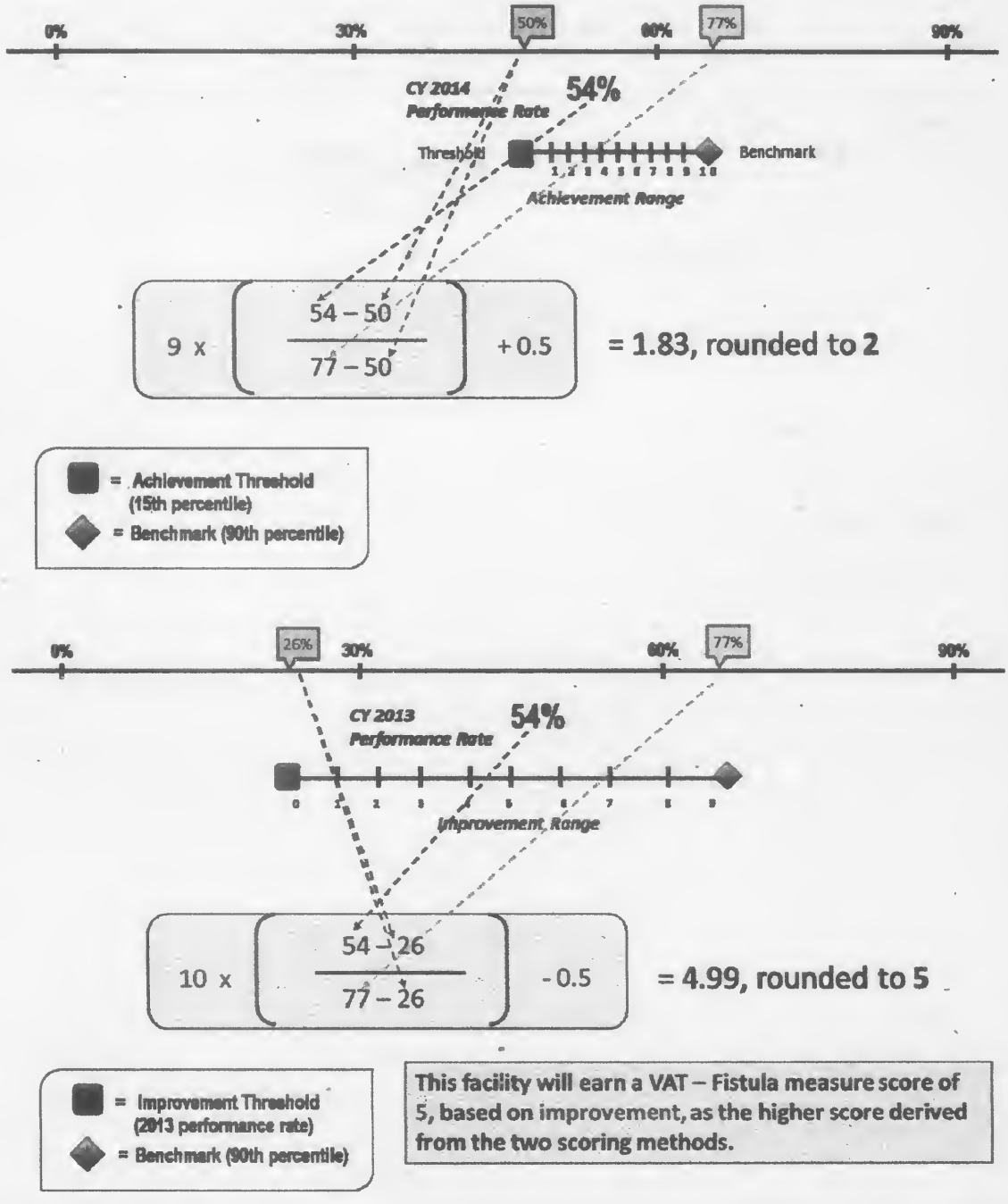
Figure 2 shows an example of scoring for another facility, Facility B. As illustrated below, the facility's performance on the example clinical measure improved from 26 percent in CY 2013 to 54 percent during the performance period. The achievement threshold is 50 percent and the achievement benchmark is 77 percent. Because the facility's performance during the performance period is within the achievement range and the improvement range, we must calculate the improvement and achievement scores to determine the example clinical measure score.

To calculate the achievement score, we would apply the formula discussed above. The result of this formula for this example is $[9 * ((54-50)/(77-50))] + .5$, which equals 1.83, and we round to the nearest integer, which is 2.

Likewise, to calculate the improvement score, we apply the improvement formula discussed above. The result of this formula for this is example is $[10 * ((54-26)/(77-26))] - .5$, which equals 4.99 and we round to the nearest integer, which is 5.

Therefore, for this example clinical measure, Facility B's achievement score is 3, and its improvement score is 5. We award Facility B the higher of the two scores for this clinical measure. Thus, Facility B's score on this example measure is 5.

Figure 2



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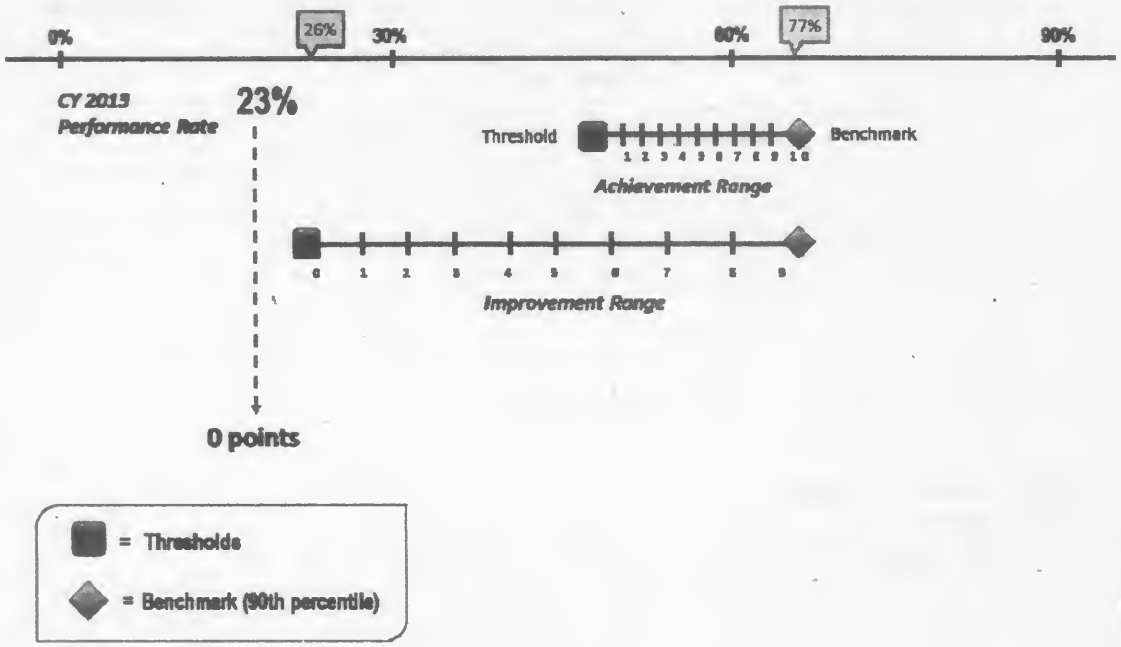
In Figure 3, Facility C's performance on the example clinical measure drops from 26 percent in CY 2013 to 23 percent during the performance period, a decline of 3 percent. Because Facility C's performance during the performance period falls below the achievement threshold of 26 percent, it receives 0 points for achievement. Facility C also receives 0 points for improvement because its performance during the performance period was lower than its performance during CY 2013. Therefore, in this example, Facility C would receive 0 points for the example clinical measure.

Figure 3



The method illustrated above would be applied to each clinical measure in order to obtain a score for each measure. Scores for reporting measures are calculated based upon their individual criteria, as discussed earlier.

After calculating the scores for each measure, we would calculate the TPS. As an example, by applying the weighting criteria to a facility that receives a score on all finalized measures, we would calculate the facility's TPS using the following formula:

Total Performance Score = [(.150 * Vascular Access Type Measure Topic) + (.150 * Kt/V Dialysis Adequacy Measure Topic) + (.150 * Anemia Management Clinical Measure Topic) + (.150 * Hypercalcemia Measure) + (.150 * NHSN Bloodstream Infection in Hemodialysis Outpatients) + (.05 * ICH CAHPS Survey Reporting Measure) + (.05 * Mineral Metabolism Reporting Measure) + (.05 * Anemia Management Reporting Measure) + (.05 * Pediatric Iron Therapy Reporting Measure) + (.05 * Comorbidity Reporting Measure)] * 10.

The TPS would be rounded to the nearest integer (and any individual measure values ending in .5 would be rounded to the next higher integer).

However, if, for example, a facility did not receive a score (that is, did not have enough qualifying cases) on the proposed Hypercalcemia measure, then the facility's TPS would be calculated as follows:

Total Performance Score = [(.188 * Vascular Access Type Measure Topic) + (.188 * Kt/V Dialysis Adequacy Measure Topic) + (.188 * Anemia Management Clinical Measure Topic) + (.188 * NHSN Bloodstream Infection in Hemodialysis Outpatients) + (.05 * ICH CAHPS Survey Reporting Measure) + (.05 * Mineral Metabolism Reporting Measure) + (.05 * Anemia Management Reporting Measure) + (.05 * Pediatric Iron Therapy Reporting Measure) + (.05 * Comorbidity Reporting Measure)] * 10.

Again, the TPS would be rounded to the nearest integer (and any individual measure values ending in .5 would be rounded to the next higher integer).

Finally, for example, if a facility is eligible for only two of the reporting measures, then the facility's TPS would be calculated as follows:

Total Performance Score = [(.150 * Vascular Access Type Measure Topic) + (.150 * Kt/V Dialysis Adequacy Measure Topic) + (.150 * Anemia Management Cinical Measure Topic) + (.150 * Hypercalcemia Measure) + (.150 * NHSN Bloodstream Infection in Hemodialysis Outpatients) + (.125 * Anemia Management Reporting Measure) + (.125 * Comorbidity Reporting Measure)] * 10.

Again, the TPS would be rounded to the nearest integer (and any individual measure values ending in .5 would be rounded to the next higher integer).

10. Proposed Minimum Data for Scoring Measures for the PY 2016 ESRD QIP and Future Payment Years

For the same reasons described in the CY 2013 ESRD PPS final rule (77 FR 67510 through 67512), for PY 2016 and future payment years, we are proposing to only score facilities on clinical and reporting measures for which they have a minimum number of qualifying cases during the performance period. For PY 2016 and future payment years, we are proposing that a facility must have a threshold of at least 11 qualifying cases for the entire performance period in order to be scored on a clinical measure. We are proposing that reporting measures other than ICH CAHPS will have a threshold of one qualifying case during the performance period. The 11-qualifying case minimum was intended to reduce burden on facilities with limited qualifying cases for earlier

reporting measures (77 FR 67480, 67483, 67486 and 67493). We are proposing to set the reporting measure case minimums at one because we plan to use data to permit future implementation of clinical measures. If patients in small facilities are systematically excluded, then we will not be able to gather the robust data we need to support the performance standard, benchmark, and achievement threshold calculations in future payment years. For example, if we excluded facilities with 10 or fewer patients from the Pediatric Iron Therapy reporting measure, then very few, if any, facilities would be able to report the measure, and we would be unable to collect meaningful data for future measure development. Similarly, if we excluded facilities with 10 or fewer patients from the comorbidity reporting measure, then we would be unable to use updated comorbidities for patients in these facilities in a risk-adjusment calculation should we propose to adopt an SHR and/or SMR clinical measure in the future. For those reasons, we are proposing that the case minimum for all reporting measures except for ICH CAHPS be one.

For the proposed expanded ICH CAHPS reporting measure, we are proposing that facilities with fewer than 30 qualifying cases during the performance period not be scored on the measure. In the CY 2013 ESRD PPS final rule, we excluded facilities with 10 or fewer adult in-center hemodialysis patients from the ICH CAHPS measure because we recognized that, for many small dialysis facilities, hiring a third-party administrator to fulfill the ICH CAHPS survey requirements would have been impractical or prohibitively costly (77 FR 67480). As we move toward developing a clinical measure, we have determined that the survey results are more reliable if there are at least 30 surveys submitted per facility. Therefore, we are proposing that for PY 2016 and future payment years, facilities that treat fewer than 30 qualifying cases (defined as adult in-center hemodialysis patients) during the performance period will be excluded from this measure. We further are proposing that we will consider a facility to have met the 30-patient threshold unless it affirmatively attests in CROWNWeb by January 31 of the year prior to the year in which payment reductions will be made (for example, January 31, 2015, for the PY 2016 ESRD QIP) that it treated 29 or fewer adult in-center hemodialysis patients during the performance period.

For the same reasons described in the CY 2013 ESRD PPS final rule (77 FR 67510 through 67512), for PY 2016 and future payment years, we are proposing to apply to each clinical measure score for which a facility has between 11 and 25 qualifying cases the same adjustment factor we finalized in the CY 2013 ESRD PPS final rule (77 FR 67511). We seek public comment on these proposals.

For the PY 2016 ESRD QIP and future payment years, we are also proposing to continue to begin counting the number of months or quarters, as applicable, for which a facility is open on the first day of the month after the facility's CCN open date. With the exception of the ICH CAHPS expanded reporting measure, we are proposing that only facilities with a CCN open date before July 1, 2014, be scored on the proposed reporting measures. Under the specifications for the proposed ICH CAHPS reporting measure, facilities would need to administer the survey (via a CMS-approved, third-party vendor) during the performance period. Because arranging such an agreement takes time, we are proposing that only facilities with a CCN open date before January 1 of the performance period to be scored on this measure. Additionally, we are proposing that facilities with CCN open dates after January 1, 2014 will not be scored on the NHSN. We note that in previous payment years we have awarded partial credit to facilities that submitted less than 12 months of data to encourage them to enroll in and report data in the NHSN system. However, we are proposing to collect 12 months of data on this clinical measure because infection rates vary through different seasons of the year.

As discussed above, we are proposing that a facility will not receive a TPS unless it receives a score on at least one clinical and one reporting measure. We note that finalizing this proposal would result in facilities not being eligible for a payment reduction for the PY 2016 ESRD QIP and future payment years if they have a CCN open date on or after July 1 of the performance period (CY 2014 for the PY 2016 ESRD QIP). We request comment regarding these proposals.

11. Proposed Payment Reductions for the PY 2016 ESRD QIP and Future Payment Years

Section 1881(h)(3)(A)(ii) of the Act requires the Secretary to ensure that the application of the scoring methodology results in an appropriate distribution of payment reductions across facilities, such that facilities achieving the lowest TPSs receive the largest payment reductions. For PY 2016, we are proposing that a facility would not receive a payment reduction if it achieves a minimum TPS that is equal to or greater than the total of the points it would have received if: (i) It performed at the performance standard for each clinical measure; (ii) it received zero points for each clinical measure that did not have a numerical value for the performance standard published with the PY 2016 final rule; and (iii) it received five points for each reporting measure. We request comments on these proposals.

Section 1881(h)(3)(A)(ii) of the Act requires that facilities achieving the lowest TPSs receive the largest payment reductions. For PY 2016 and future payment years, we are proposing that the payment reduction scale be the same as the PY 2015 ESRD QIP (77 FR 67514 through 67516). We are proposing that, for each 10 points a facility falls below the minimum TPS, the facility would receive an additional 0.5 percent reduction on its ESRD PPS payments for PY 2016 and future payment years, with a maximum reduction of 2.0 percent. As we stated in the CY 2012 ESRD PPS final rule, we believe that such a sliding scale will incentivize facilities to meet the performance standards established and continue to improve their performance; even if a facility fails to achieve the minimum TPS, such a facility will still be incentivized to strive for and attain better performance rates in order to reduce the percentage of its payment reduction (76 FR 70281). We request comments on the proposed payment reduction scale.

Because we are not yet able to calculate the performance standards for each of the clinical measures, we are also not able to calculate the minimum TPS at this time. Based on the estimated performance standards listed above using the most recent data available, we estimate for PY 2016 that a facility must meet or exceed a minimum TPS of 46. For all of the clinical measures except Hypercalcemia, this data comes from the period between January 2012 and November 2012. For the Hypercalcemia clinical measure, the data comes from the period between May 2012 and November 2012. We are proposing that facilities failing to meet the minimum TPS (as will be published in the Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies final rule in November) will receive payment reductions based on the estimated total performance score ranges indicated in Table 10 below.

TABLE 10—ESTIMATED PAYMENT REDUCTION SCALE FOR PY 2016 BASED ON THE MOST RECENTLY AVAILABLE DATA

Total performance score	Reduction (Percent)
100–46 *	0
45–36	0.5
35–26	1.0
25–16	1.5
15–0	2.0

12. Data Validation

One of the critical elements of the ESRD QIP's success is ensuring that the data submitted to calculate measure scores and TPSs are accurate. We began a pilot data-validation program in CY 2013 for the ESRD QIP, and we are now in the process of procuring the services of a data-validation contractor, who will be tasked with validating a national sample of facilities' records as they report CY 2013 data to CROWNWeb. The first priority will be to develop a methodology for validating data submitted to CROWNWeb under the pilot data-validation program; once this methodology has been developed, CMS will publicize it through a CROWN Memo and solicit public comment. As part of the CY 2013 ESRD QIP PPS final rule (77 FR 67522 through 67523), we finalized a requirement to sample approximately 10 records from 750 randomly selected facilities; these facilities will have 60 days to comply once they receive requests for records. We are proposing to extend this pilot data-validation program to include analysis of data submitted to CROWNWeb during CY 2014. For the PY 2016 ESRD QIP, sampled facilities will be reimbursed by our validation contractor for the costs associated with copying and mailing the requested records. Additionally, we are proposing to reduce the annual random sample size from 750 to 300. We believe that this smaller sample size will still yield a sufficiently precise estimate of QIP reliability while imposing a smaller burden on ESRD QIP-eligible facilities and CMS alike. We are also proposing to extend our policy that no facility will receive a payment reduction resulting from the validation process for CY 2014 during PY 2016. Once we have gathered additional information based on these initial validation efforts, we will propose further procedures for validating data submitted in future years of the ESRD QIP. These procedures may include a method for scoring facilities based on the accuracy of the data they submit to CROWNWeb, and a method to assign penalties for submitting inaccurate data. We solicit comments on these proposals.

We are also considering a feasibility study for validating data reported to CDC's NHSN Dialysis Event Module, which may mirror the process used by the Hospital Inpatient Quality Reporting Program (77 FR 53539 through 53553). Although this is still in the early stages of development, we anticipate that this study may mirror the validation sample by targeting "candidate HAI events," much like the methodology used by CMS's Hospital Inpatient Quality Reporting Program. The feasibility study will likely: (i) Estimate the burden and associated costs to ESRD QIP-eligible facilities for participating in an NHSN validation program; (ii) assess the costs to CMS to implement an NHSN validation program on a statistically relevant scale; and (iii) develop and test a protocol to validate NHSN data in nine ESRD QIP-eligible facilities. Facilities would be selected on a voluntary basis. Based on the results of this study, we intend to propose more detailed requirements for validating NHSN data used in the ESRD QIP in the future.

13. Proposals for Scoring Facilities Whose Ownership Has Changed

During PY 2012 (our first implementation year for the ESRD QIP), facilities requested guidance regarding how a change in ownership affects any applicable ESRD QIP payment reductions. Starting with the implementation of the PY 2015 ESRD QIP (which is CY 2013), the application of an ESRD QIP payment reduction depended on whether the facility retained its CCN after the ownership transfer. If the facility's CCN remained the same after the facility was transferred, then we considered the facility to be the same facility (despite the change in ownership) for the purposes of the ESRD QIP, and we applied any ESRD QIP payment reductions that would have applied to the transferor to the transferee. Likewise, as long as the facility retained the same CCN, we calculated the measure scores using the data submitted during the applicable period, regardless of whether the ownership changed during one of these periods. If, however, a facility received a new CCN as a result of a change in ownership, then we treated the facility as a new facility for purposes of the ESRD QIP based on the new facility's CCN open date. We believe that these proposals are the most operationally efficient and will allow facilities the greatest amount of certainty when they change ownership. We are proposing to continue applying these rules during the PY 2016 ESRD QIP and future years of the program, and we request public comment on this proposal.

14. Proposals for Public Reporting Requirements

Section 1881(h)(6)(A) of the Act requires the Secretary to establish procedures for making information available to the public about facility performance under the ESRD QIP, including information on the TPS (as along with appropriate comparisons of facilities to the national average with respect to such scores) and scores for individual measures achieved by each facility. Section 1881(h)(6)(B) of the Act further requires that a facility have an opportunity to review the information to be made public with respect to that facility prior to publication. In addition, section 1881(h)(6)(C) of the Act requires the Secretary to provide each facility with a certificate containing its TPS to post in patient areas within the facility. Finally, section 1881(h)(6)(D) of the Act requires the Secretary to post a list of facilities and performance-score data on a CMS Web site.

In the PY 2012 ESRD QIP final rule, we adopted uniform requirements based on sections 1881(h)(6)(A) through 1881(h)(6)(D) of the Act, thereby establishing procedures for facilities to review the information to be made public and for informing the public through facility-posted certificates. We are proposing to maintain the public reporting requirements as finalized in the CY 2013 ESRD PPS final rule, except regarding the timing of when facilities must post their certificates.

For PYs prior to PY 2014, we required facilities to post certificates within 5 business days of us making these certificates available for download from dialysisreports.org in accordance with section 1881(h)(6)(C) of the Act. (77 FR 67516 and 76 FR 637) In the CY 2013 ESRD PPS final rule, we noted that many individuals responsible for posting the certificates were away on holiday during the December time period when certificates typically become available, and finalized that, beginning in PY 2014, a facility must post copies of its certificates by the first business day after January 1 of the payment year. (77 FR 67517) We also noted that certificates are typically available for download on or around December 15 of each year, and stated that we believe that this two week time is enough to allow facilites to post them.

Since the CY 2013 ESRD PPS final rule was finalized, we have noted that a posting deadline of the first business day after January 1 could create

difficulties for facilities if it were ever the case that certificates were not available for download in the typical timeframe. We want to ensure that facilities have adequate time to post certificates as required in this circumstance, and that the required timing accommodates the December holidays. Therefore, we propose that, beginning in PY 2014, facilities must post certificates within fifteen business days of us making these certificates available for download from dialysisreports.org in accordance with section 1881(h)(6)(C) of the Act. We request comments on this proposal.

IV. Clarification of the Definition of Routinely Purchased Durable Medical Equipment (DME)

A. Background

1. Background for DME

Title XVIII of the Social Security Act (the Act) governs the administration of the Medicare program. The statute provides coverage for broad categories of benefits, including, but not limited to, inpatient and outpatient hospital care, skilled nursing facility care, home health care, physician services, and DME. "Medical and other health services," which is defined under section 1861(s)(6) of the Act to include DME, is a separate Medicare Part B benefit for which payment is authorized by section 1832 of the Act. In accordance with section 1861(n) of the Act, the term "durable medical equipment" includes iron lungs, oxygen tents, hospital beds, and wheelchairs used in the beneficiary's home, including an institution used as his or her home other than an institution that meets the requirements of section 1861(e)(1) or section 1819(a)(1) of the Act.

Section 1834(a) of the Act, as added by section 4062 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), Public Law 100–203, sets forth the payment rules for DME furnished on or after January 1, 1989. The Medicare payment amount for a DME item is generally equal to 80 percent of the lesser of the actual charge or the fee schedule amount for the item, less any unmet Part B deductible. The beneficiary's coinsurance for such items is generally equal to 20 percent of the lesser of the actual charge or the fee schedule amount for the item once the deductible is met. The fee schedule amounts are generally calculated using average allowed charges from a base period and then increased by annual update factors. Sections 1834(a)(2) through (a)(7) of the Act set forth separate classes of DME and separate payment rules for each class. The six classes of items are: inexpensive and other routinely purchased DME; items requiring frequent and substantial servicing; customized items; oxygen and oxygen equipment; other covered items (other than DME); and other items of DME, also referred to as capped rental items. The class for inexpensive and other routinely purchased DME also includes accessories used in conjunction with nebulizers, aspirators, continuous positive airway pressure devices and respiratory assist devices. Items of DME fall under the class for other items of DME (capped rental items) if they do not meet the definitions established in the statute and regulations for the other classes of DME.

2. Medicare Guidance and Rulemaking Regarding Definition of Routinely Purchased DME

On July 14, 1988, CMS central office issued a program memorandum to the CMS regional offices containing guidance for carriers to follow in developing a data base that would be used in identifying other routinely purchased DME for the purpose of implementing section 1834(a)(2)(a)(ii) of the Act. For the purpose of identifying routinely purchased items, the carriers were instructed via the program memorandum to "compute the unduplicated count of beneficiaries who purchased the item, by HCPCS code, and a count of those who only rented the item during the 7/1/86–6/30/87 period." The carriers were instructed to include purchase of new and used items and beneficiaries who purchased an item that was initially rented in the count of beneficiaries who purchased the item. The carriers made determinations regarding whether DME furnished during this period would be rented (non-capped) or purchased based on which payment method was more economical.

In November 1988, CMS revised Part 3 (Claims Process) of the Medicare Carriers Manual (HCFA Pub. 14–3) via transmittal number 1279, by adding section 5102 and detailed instructions for implementation of the fee schedules and payment classes for DME mandated by section 4062 of OBRA 87. The new implementing instructions were effective for services furnished on or after January 1, 1989. Section 5102.1 indicated that carriers would be provided with a listing of the HCPCS (Health Care Financing Administration Common Procedure Coding System prior to 2003 and Healthcare Common Procedure Coding System beginning in 2003) codes for the equipment in the routinely purchased DME category. The initial classifications were implemented on January 1, 1989, in accordance with the program instructions, and included a listing of HCPCS codes for base equipment such as canes and walkers, as well as HCPCS codes for replacement accessories such as cane tips, walker leg extensions, and power wheelchair batteries for use with medically necessary, patient-owned base equipment (canes, walkers, and power wheelchairs). In the case of expensive accessories that were not routinely purchased during July 1986 through June 1987, such as a wheelchair attachment to convert any wheelchair to one arm drive, these items fell under the listing of HCPCS codes for capped rental items. Medicare payment for DME extends to payment for replacement of essential accessories used with patient-owned equipment or accessories, attachments, or options that modify base equipment, such as the addition of elevating leg rests to a manual wheelchair.

The Medicare definition of routinely purchased equipment is under 42 CFR § 414.220(a)(2) and specifies that routinely purchased equipment means equipment that was acquired by purchase on a national basis at least 75 percent of the time during the period July 1986 through June 1987." This definition was promulgated via an interim final rule (IFC) on December 7, 1992 (57 FR 57698), remaining consistent with Medicare program guidance in effect beginning in 1988 and discussed above, and finalized on July 10, 1995 (60 FR 35492). In the preamble of the 1992 IFC (57 FR 57679), we discussed how items were classified as routinely purchased DME based on data from July 1986 through June 1987, "in the absence of a statutory directive that defines the period for determining which items are routinely purchased." CMS indicated that it "selected the period July 1, 1986 through June 30, 1987, because it is the same 12-month period required by section 1834(a)(2)(B)(i) of the Act for calculating the base fee schedule amount for routinely purchased equipment." This period was therefore established as the period from which data was used for identifying the items that had been acquired on a purchase basis 75 percent of the time or more under the Medicare rent/purchase program.

3. Payment for Inexpensive or Routinely Purchased Items and Capped Rental Items

Pursuant to 42 CFR § 414.220(b) payment for inexpensive or routinely purchased DME is made on a purchase

or rental basis, with total payments being limited to the purchase fee schedule amount for the item. If an item is initially rented and then purchased, the allowed purchase charge is based on the lower of the actual charge or fee schedule amount for purchase of the item minus the cumulative allowed charge for previously paid rental claims. Pursuant to 42 CFR § 414.229(f), payment for capped rental items is made on a monthly rental basis for up to 13 months of continuous use. The supplier must transfer title to the equipment to the beneficiary on the first day following the 13th month of continuous use.

B. Current Issues

Concerns have been raised about the application of the definition of and payment for routinely purchased DME, as it applies to expensive DME accessories. For example, recently one manufacturer of a new, expensive wheelchair accessory, included under a HCPCS code that would result in a corresponding Medicare fee schedule amount of approximately $3,000, if purchased, questioned why the HCPCS code describing their product was classified as capped rental DME. They pointed out that codes added to the HCPCS in recent years for other similar and more expensive wheelchair accessories costing $4,000 to $10,000 were classified as routinely purchased DME even though the items were not purchased under Medicare during the period specified in § 414.220(b). As a result, we began a review of expensive items that have been classified as routinely purchased equipment since 1989, that is, new codes added to the HCPCS after 1989 for items costing more than $150, to address this apparent inconsistency.

As a result of this review, we found some codes that are not classified consistent with the regulatory definition of routinely purchased equipment at section § 414.220(a)(2). We found that HCPCS codes added after 1989 for expensive, durable accessories used with base equipment, such as wheelchairs, have been classified as routinely purchased equipment. While section 1834(a)(2)(A)(iii) of the Act and 42 CFR § 414.220(a)(3) of the regulations allow payment for the purchase of accessories used in conjunction with nebulizers, aspirators, continuous positive airway pressure devices (CPAP), other items covered under the DME benefit including DME other than nebulizers, aspirators, CPAP devices, respiratory assist devices and accessories used in conjunction with those items, are paid for in accordance with the rules at section 1834(a) of the Act and are classified under sections 1834(a)(3) thru (7) of the Act as inexpensive and other routinely purchased DME, items requiring frequent and substantial servicing, certain customized items, oxygen and oxygen equipment, other covered items other than DME, or other covered items of DME.

Additionally, we found that in some cases, expensive items of DME were classified as routinely purchased based on information suggesting that payers other than Medicare were routinely making payment for the items on a purchase basis. We believe that classifying an item as routinely purchased equipment based on data and information from other payers for the purposes of implementing § 414.220(b) is inappropriate because other payers do not operate under the same payment rules as Medicare. Other payers may decide to purchase expensive items for reasons other than a achieving a more economical alternative to rental, the basis Medicare contractors used in deciding whether to purchase items during July 1986 through June 1987. In other cases, expensive items of DME were classified as routinely purchased equipment based on requests from manufacturers of equipment primarily used by Medicaid beneficiaries. We do not believe we should classify an item as routinely purchased equipment for the purposes of implementing § 414.220(b) of the Medicare regulations based on how this might affect other payers such as Medicaid state agencies because such classifications are not consistent with the regulations, which for Medicare purposes generally require payment on a capped rental basis for any item with a purchase cost of greater than 150 dollars. After reviewing this issue, we do not think the regulation supports the classification of expensive DME as routinely purchased equipment based solely on whether other payers routinely pay for the item on a purchase basis or how manufacturers would prefer that other payers pay for the item. The classification of HCPCS codes for expensive equipment added after 1989 as routinely purchased equipment based on this kind of information does not comply with the Medicare definition of routinely purchased equipment and defeats a fundamental purpose of the capped rental payment methodology to avoid paying the full purchase price of costly equipment used only a short time.

DME and accessories used in conjunction with DME are paid for under the DME benefit and in accordance with the rules at section 1834(a) of the Act. We are clarifying the existing definition of routinely purchased equipment at § 414.220(a)(2) and providing notice that certain HCPCS codes for DME and DME accessories added to the HCPCS after 1989 that are currently classified as routinely purchased equipment should be reclassified as capped rental items (see Table 11 below). This applies to all expensive items for which Medicare claims data July 1986 through June 1987 does not exist or does not indicate that the item was acquired by purchase on a national basis at least 75 percent of the time. In the case of expensive accessories that are furnished for use with complex rehabilitative power wheelchairs, the purchase option for complex rehabilitative power wheelchairs at section 1834(a)(7)(A)(iii) of the Act would also apply to these accessories. For any wheelchair accessory classified as a capped rental item and furnished for use with a complex rehabilitiave power wheelchair (that is, furnished to be used as part of the complex rehabilitative power wheelchair), the supplier must give the beneficiary the option of purchasing these accessories at the time they are furnished. These items would be considered as part of the complex rehabilitative power wheelchair and associated purchase option set forth at § 414.229(a)(5).

We are soliciting comments on the effective date(s) for reclassifying items previously classified as routinely purchased equipment to the capped rental payment class in order to be in compliance with current regulations. Given that some items (HCPCS codes) may be included in the Round 2 and/or Round 1 Recompete phases of the competitive bidding program, we do not believe we can change the classification for items furnished under these programs until the contracts awarded based on these competitions expire on July 1, 2016, and January 1, 2017, respectively, regardless of whether the item is provided in an area subject to competitive bidding or not. We propose that the reclassification of items previously classified as routinely purchased equipment to the capped rental payment class be effective January 1, 2014, for all items that are not included in either a Round 2 or Round 1 Recompete competitive bidding program (CBP) established in accordance with § 414.400. For any item currently under a Round 2 CBP, instead of a January 1, 2014, effective date we propose July 1, 2016, for these reclassifications, which would apply to all items furnished in all areas of the

country, with the exception of items furnished in a Round 1 Recompete CBP. For items furnished in a Round 1 Recompete CBP, we propose an effective date of January 1, 2017, which would only apply to items furnished in the nine Round 1 Recompete areas. Therefore, we propose to generally base the effect dates on when the competitive bidding programs end. To summarize, the proposed effective dates for the reclassifications of these items from the routinely purchased DME class to the capped rental DME class would be:

- January 1, 2014, for items furnished in all areas of the country if the item is not included in Round 2 or Round 1 Recompete CBP;
- July 1, 2016, for items furnished in all areas of the country if the item is included in a Round 2 CBP and not a Round 1 Recompete CBP and for items included in a Round 1 Recompete CBP but furnished in an area other than one of the 9 Round 1 Recompete areas; and
- January 1, 2017, for items included in a Round 1 Recompete CBP and furnished in one of the nine Round 1 Recompete areas.

With the exception of the items described in the fourth bullet, this implementation strategy would allow the item to be moved to the payment class for capped rental items at the same time in all areas of the country without disrupting CBPs currently underway. For Round 1 Recompete items furnished in nine areas of the country for the six-month period from July 1, 2016, thru December 31, 2016, Medicare payment would be on a capped rental basis in all parts of the country other than these nine areas.

Alternatively, the effective date for the reclassifications could be January 1, 2014, for all items paid under the fee schedule. In other words, the reclassification would not affect payments for items furnished under the Round 2 or Round 1 Recompete CBPs in the respective CBAs until the contract entered into under these programs expire on July 1, 2016, and January 1, 2017, respectively. However, this alternative would result in an extensive two and a half year period from Janary 2014 through June 2016, where Medicare payment would be on a capped rental basis for the items in half of the country (non-competitive bidding areas) and on a purchase basis in the other half of the country (109 Round 2 and/or Round 1 Recompete competitive bidding areas). We believe that this bifurcation in payment classifications would create confusion and would be difficult to implement, and we are soliciting comments on this alternative implementation strategy.

We have identified approximately 80 HCPCS codes requiring reclassification from the inexpensive or routinely purchased DME payment class to the capped rental DME payment class. The codes are shown in Table 11 below. The impacts of our changes are included in the discussion of impacts in section X of this rule.

As shown in Table 11, Column A of the table shows the type of DME. Columns B and C indicate the HCPCS level II codes and the short descriptor. The long descriptor for each code is available at *http://www.cms.gov/Medicare/Coding/HCPCSReleaseCodeSets/Alpha-Numeric-HCPCS.html.*

As shown in Column A, the majority of codes relate to manual wheelchairs and wheelchair accessories. In the case of accessories that are only used with complex rehabilitative power wheelchairs classified as capped rental items, the purchase option for complex rehabilitative power wheelchairs applies to these accessories because they are part of the capped rental wheelchair that the supplier is required to offer to the beneficiary on a lump sum purchase basis. We have displayed in Column B the items that would be associated with the purchase option set forth at section § 414.229(a)(5). Wheelchair accessories that are also used with manual wheelchairs or standard power wheelchairs would also be subject to the purchase option if they are furnished for use with a complex rehabilitative power wheelchair.

TABLE 11—ROUTINELY PURCHASED ITEMS RECLASSIFIED TO CAPPED RENTAL

Group category	HCPCS	Descriptor
Automatic External Defibrillator	K0607	Repl battery for AED.
Canes/Crutches	E0117	Underarm spring assist crutch.
Glucose Monitor	E0620	Capillary blood skin piercing device laser.
High Frequency Chest Wall Oscillation Device (HFCWO)	A7025	Replace chest compress vest.
Hospital Beds/Accessories	E0300	Enclosed ped crib hosp grade.
Misc. DMEPOS	A4639	Infrared ht sys replacement pad.
	E0762	Trans elec jt stim dev sys.
	E1700	Jaw motion rehab system.
Nebulizers & Related Drugs	K0730	Ctrl dose inh drug deliv system.
Osteogenesis Stimulator	E0760	Osteogenesis ultrasound stimulator.
Other Neuromuscular Stimulators	E0740	Incontinence treatment system.
	E0764	Functional neuromuscular stimulation.
Pneumatic Compression Device	E0656	Segmental pneumatic trunk.
	E0657	Segmental pneumatic chest.
Power Operated Vehicles (POV)	E0984	Add pwr tiller.
Respiratory Equipment	E0457	Chest shell.
Speech Generating Devices	E2500	SGD digitized pre-rec <=8min.
	E2502	SGD prerec msg >8min <=20min.
	E2504	SGD prerec msg >20min <=40min.
	E2506	SGD prerec msg > 40 min.
	E2508	SGD spelling phys contact.
	E2510	SGD w multi methods messg/access.
Support Surfaces	E0197*	Air pressure pad for mattress.
	E0198	Water pressure pad for mattress.
Traction Equipment	E0849	Cervical pneum traction equip.
	E0855	Cervical traction equipment.
	E0856	Cervical collar w air bladder.
Walkers	E0140*	Walker w trunk support.
	E0144	Enclosed walker w rear seat.
	E0149*	Heavy duty wheeled walker.
Wheelchairs Manual	E1161	Manual adult wc w tiltinspac.

TABLE 11—ROUTINELY PURCHASED ITEMS RECLASSIFIED TO CAPPED RENTAL—Continued

Group category	HCPCS	Descriptor
	E1232	Folding ped wc tilt-in-space.
	E1233	Rig ped wc tltnspc w/o seat.
	E1234	Fld ped wc tltnspc w/o seat.
	E1235	Rigid ped wc adjustable.
	E1236	Folding ped wc adjustable.
	E1237	Rgd ped wc adjstabl w/o seat.
	E1238	Fld ped wc adjstabl w/o seat.
Wheelchairs Options/Accessories	E0985*	W/c seat lift mechanism.
	E0986	Man w/c push-rim pow assist.
	E1002^	Pwr seat tilt.
	E1003^	Pwr seat recline.
	E1004^	Pwr seat recline mech.
	E1005^	Pwr seat recline pwr.
	E1006^	Pwr seat combo w/o shear.
	E1007^	Pwr seat combo w/shear.
	E1008^	Pwr seat combo pwr shear.
	E1010^	Add pwr leg elevation.
	E1014	Reclining back add ped w/c.
	E1020*	Residual limb support system.
	E1028*	W/c manual swingaway.
	E1029	W/c vent tray fixed.
	E1030^	W/c vent tray gimbaled.
	E2227	Gear reduction drive wheel.
	E2228*	Mwc acc, wheelchair brake.
	E2310^	Electro connect btw control.
	E2311^	Electro connect btw 2 sys.
	E2312^	Mini-prop remote joystick.
	E2313^	PWC harness, expand control.
	E2321^	Hand interface joystick.
	E2322^	Mult mech switches.
	E2325^	Sip and puff interface.
	E2326^	Breath tube kit.
	E2327^	Head control interface mech.
	E2328^	Head/extremity control interface.
	E2329^	Head control interface nonproportional.
	E2330^	Head control proximity switch.
	E2351^	Electronic SGD interface.
	E2368*	Pwr wc drivewheel motor replace.
	E2369*	Pwr wc drivewheel gear box replace.
	E2370*	Pwr wc dr wh motor/gear comb.
	E2373	Hand/chin ctrl spec joystick.
	E2374^	Hand/chin ctrl std joystick.
	E2375*	Non-expandable controller.
	E2376^	Expandable controller, replace.
	E2377^	Expandable controller, initial.
	E2378	Pw actuator replacement.
	K0016*	Detach non-adjus hght armrst.
	K0070*	Rear whl complete pneum tire.
Wheelchairs Seating	E0955*	Cushioned headrest.

*Effective July 1, 2016. If the item is furnished in CBAs in accordance with contracts entered into as part of the Round 1 Recompete of DMEPOS CBP, then effective January 1, 2017.
^Item billable with Complex Rehabilitative Power Wheelchair codes K0835–K0864.

In summary, we are providing notice of certain HCPCS codes that would be reclassified as capped rental items (see Table 11 of codes). We invite comments on this section.

V. Clarification of the 3-Year Minimum Lifetime Requirement (MLR) for DME

DME is covered by Medicare based, in part, upon section 1832(a) of the Act, which describes the scope of benefits under the supplementary medical insurance program (Medicare Part B), to include "medical and other health services," which is further defined undersection 1861(s)(6) of the Act to include DME. In addition, section 1861(m)(5) of the Act specifically includes DME in the definition of the term "home health services." In accordance with section 1861(n) of the Act, the term "durable medical equipment" includes iron lungs, oxygen tents, hospital beds, and wheelchairs used in the patient's home whether furnished on a rental basis or purchased. The patient's home includes an institution used as his or her home other than an institution that meets the requirements of section 1861(e)(1) or section 1819(a)(1) of the Act. Besides being subject to this provision, the coverage of DME must meet the requirements of section 1862(a)(1)(A) of the Act, which in general excludes from payment any items or services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member, and section 1862(a)(6) of the Act, which (except for certain specified exceptions) precludes payment for personal comfort items.

Section 414.202 defines DME as equipment furnished by a supplier or a

home health agency that meets the following conditions: (1) Can withstand repeated use; (2) effective with respect to items classified as DME after January 1, 2012, has an expected life of at least 3 years; (3) is primarily and customarily used to serve a medical purpose; (4) generally is not useful to an individual in the absence of an illness or injury; and is appropriate for use in the home. Prior to 2012, the definition for DME did not contain a 3-year minimum lifetime requirement (MLR) although Section 110.1 of chapter 15 of the Medicare Benefit Policy Manual (CMS-Pub. 100–02) provided further guidance with regard to the definition of DME and durability of an item that is when an item is considered durable.

B. Current Issues

On November 10, 2011, CMS issued a final rule in which it revised the definition of DME at § 414.200 by adding a 3-year MLR effective January 1, 2012, that must be met by an item or device in order to be considered durable for the purpose of classifying the item under the Medicare benefit category for DME (76 FR 70228 (November 10, 2011)). Specifically, an additional condition under § 414.200 is that DME must be equipment furnished by a supplier or a home health agency that, effective with respect to items classified as DME after January 1, 2012, has an expected life of at least 3 years. The change to the regulation was designed to further clarify the meaning of the term "durable" and provide an interpretation of the statute generally consistent with the DME payment and coverage provisions, including, Medicare program guidance at section 280.1 of chapter 1, part 4 of the Medicare National Coverage Determinations Manual (Pub. 100–03) which specifies that an item can withstand repeated use means that the item could normally be rented and used by successive patients. The 3-year MLR is intended to specify that durable equipment is equipment that can withstand repeated use over an extended period of time. Since the vast majority of items covered under the DME benefit over the years last for 3 or more years, the MLR is intended to clarify the scope of the DME benefit primarily for new items coming on the market or in the process of being developed. The standard set forth in regulations gives manufacturers and the public a clear understanding of how long an item would need to withstand repeated use in order the meet the durability requirement for DME. The rule also provides clear guidance to CMS and other stakeholders for making consistent informal benefit category determinations and national coverage determinations for DME.

The 3-year MLR is designed to represent a minimum threshold for a determination of durability for a piece of equipment. The 3-year MLR is not an indication of the typical or average lifespan of DME, which in many cases is far longer than 3 years. The 3-year MLR does not apply to disposable supplies or accessories covered for use with DME such as masks, tubing, and blood glucose test strips. The 3-year MLR is prospective only and does not apply to equipment classified as DME before the regulation was effective, that is, January 1, 2012.

We also determined that the 3-year MLR should not apply to equipment classified as DME before the effective date to allow for continued coverage of such equipment that healthcare industry and beneficiaries have come to rely on, regardless of whether those items met the 3-year MLR set forth at 42 CFR 414.202 (76 FR 70288). Given that reliance, we did not intend to reopen those prior decisions and reclassify the equipment in light of the 3-year standard. We believe that continuing Medicare coverage for items that qualified as DME prior to the effective date, helps avoid disrupting the continuity of care for the beneficiaries that received these items for medical treatment prior to January 1, 2012.

Beneficiaries have been relying on these items for their treatment to the extent that the items have been covered as DME under Medicare and applying the 3-year MLR to these items could impact the continuity of care for these beneficiaries. Furthermore, we believed that a vast majority of the categories of items that were classified as DME before January 1, 2012, did function for 3 or more years. We also noted that the 3-year durability rule would only apply to new products, and, to the extent that a modified product is not a new product, the 3-year MLR would not be applicable.

In response to the public comments that requested further clarification on the application of the grandfathering provision for the 3-year MLR, we noted that we would consider issuing additional guidance to provide further clarification, if necessary (76 FR 70290). For purposes of providing additional guidance on the scope of the grandfathered items under the provision, we invite public comments on this issue.

C. Scope of the 3-Year MLR for DME

Under § 414.202, effective with respect to items classified as DME after January 1, 2012, an item is not considered durable unless it has an expected life of at least 3 years. Therefore, the 3-year MLR applies to new items after January 1, 2012, and does not apply to items covered under the DME benefit on or prior to January 1, 2012. Items classified as DME on or before January 1, 2012, are considered "grandfathered items" for the purpose of this requirement, regardless of whether they meet the 3-year rule.

For the purpose of providing further guidance on the scope of the 3-year MLR, we are providing clarification about how we would regard grandfathered items covered as DME prior to the effective date and we request comments on that clarification. If the product is modified (upgraded, refined, reengineered, etc.) after January 1, 2012, the item would still be classified as DME as a grandfathered item unless the modified product now has an expected life that is shorter than the expected lifetime for the item covered as DME prior to January 1, 2012, In this case, we consider the item, as modified, to be a new item that is subject to the 3-year MLR. For example, equipment covered prior to January 1, 2012, and described by code X has a life of at least 2 years. If, after January 1, 2012, that item is modified such that it no longer lasts 2 years, such modification would render the item "new" and it would be subject to the 3-year MLR. Therefore, since the new (modified) product does not last 3 years, it would not meet the definition of DME under the regulation and could not be covered or be billed using the code that described the item before it was modified.

We seek comments on this proposed clarification.

VI. Implementation of Budget-Neutral Fee Schedules for Splints, Casts and Intraocular Lenses (IOLs)

A. Background

1. Payment Under Reasonable Charges

Payment for most items and services furnished under Part B of the Medicare program is made through contractors known as Medicare Administrative Contractors (MACs). These contractors were previously referred to as carriers. Prior to 1988, in accordance with section 1842(b) of the Act, payment for most of these items and services was made on a reasonable charge basis by these contractors, with the criteria for determining reasonable charges set forth at 42 CFR part 405, subpart E of our regulations.

Under this general methodology, several factors or "charge screens" were developed for determining the

reasonable charge for an item or service. In accordance with § 405.503, each supplier's "customary charge" for an item or service, or the 50th percentile of charges for an item or service over a 12-month period, was one factor used in determining the reasonable charge. In accordance with § 405.504, the "prevailing charge" in a local area, or the 75th percentile of suppliers' customary charges for the item in the locality, was also used in determining the reasonable charge. For the purpose of calculating prevailing charges, a "locality" is defined at § 405.505 of our regulations and "may be a State (including the District of Columbia, a territory, or a Commonwealth), a political or economic subdivision of a State, or a group of States." The regulation further specifies that the locality "should include a cross section of the population with respect to economic and other characteristics." In accordance with § 405.506, for certain items, such as parenteral and enteral nutrients, supplies, and equipment, an additional factor referred to as the "lowest charge level" was used in determining the reasonable charge for an item or service. In accordance with section 5025 of the Medicare Carriers Manual (HCFA Pub. 14–3) and § 405.509 of our regulations, effective for items furnished on or after October 1, 1985, an additional factor, the "inflation-indexed charge (IIC)," was added to the factors taken into consideration in determining the reasonable charge for certain items and services. The IIC is defined in § 405.509(a) as the lowest of the fee screens used to determine reasonable charges for items and services, including supplies, and equipment reimbursed on a reasonable charge basis (excluding physicians' services) that is in effect on December 31 of the previous fee screen year, updated by the inflation adjustment factor. The inflation adjustment factor is based on the current percentage change in the consumer price index for all urban consumers (United States city average) (CPI–U) for the 12-month period ending June 30. The reasonable charge is generally set based on the lowest of the actual charge for the item or service or the factors described above.

2. Payment Under Fee Schedules

Specific provisions have been added to the Act mandating replacement of the reasonable charge payment methodology with fee schedules for most items and services furnished under Part B of the Medicare program. The phase in of fee schedules to replace reasonable charges for Medicare payment purposes began with the fee schedule for clinical diagnostic laboratory tests in 1988. As of 1997, very few items and services were still paid on a reasonable charge basis, which is a very time consuming and laborious process. Contractors must collect new charge data each year, perform the various calculations, and maintain pricing files and claims processing edits for the various charge screens. For each item that is paid on a reasonable charge basis, administrative funding must be provided to contractors for the purpose of performing these calculations and maintaining these pricing files. Therefore, replacing reasonable charge payments with fee schedules eliminates the need to fund these efforts and saves money that can be used to implement other parts of the program. Section 4315 of the Balanced Budget Act of 1997 (BBA) amended the Act at section 1842 by adding a new subsection (s). Section 1842(s) of the Act provides authority for implementing statewide or other area wide fee schedules to be used for payment of the following services that were previously on a reasonable charge basis:

- Medical supplies.
- Home dialysis supplies and equipment (as defined in section 1881(b)(8) of the Act).
- Therapeutic shoes.
- Parenteral and enteral nutrients, equipment, and supplies (PEN).
- Electromyogram devices.
- Salivation devices.
- Blood products.
- Transfusion medicine.

For Medicare payment purposes, we interpret the category "medical supplies" under section 1842(s) of the Act to include all other items paid on a reasonable charge basis as of 1997 that do not fall under any of the other categories listed in section 1842(s) of the Act. We believe that section 1842(s) of the Act is intended to provide authority for establishing fee schedules for all of the remaining, and relatively small number of items and services still paid for on a reasonable charge basis at the time of enactment in 1997. In light of this provision, we generally consider "intraocular lenses" to be paid as "medical supplies." Therefore, in addition to including splints and casts under this category, we also propose to include intraocular lenses inserted in a physician's office for the purpose of implementing this specific section. Although we recognize the terms "intraocular lenses" and "medical supplies" are separately identified under § 414.202, we note that such terms are listed for purposes of defining what constitutes orthotic and prosthetic devices (that is, these terms are excluded from such definition), and not intended to suggest these are mutually exclusive things. Accordingly, we do not believe we are precluded from establishing fee schedules for IOLs under the category of medical supplies under section 1842(s) of the Act. Nevertheless, we are specifically requesting comments on this issue.

Section 1842(s)(1) of the Act provides that the fee schedules for the services listed above are to be updated on an annual basis by the percentage increase in the CPI–U (United States city average) for the 12-month period ending with June of the preceding year, reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Total payments for the initial year of the fee schedules must be budget-neutral, or approximately equal to the estimated total payments that would have been made under the reasonable charge payment methodology. As explained below, we used this authority to establish fee schedules for parental and enteral nutrition (PEN) items and services for use in paying claims with dates of service on or after January 1, 2002.

On July 27, 1999, we published a notice of proposed rulemaking (64 FR 40534) to establish fee schedules for PEN items and services, splints and casts, intraocular lenses (IOLs) inserted in a physician's office, and various other items and services for which section 1842(s) of the Act provided authority for replacing the reasonable charge payment methodology with fee schedules. After reviewing public comments on the proposed rule, we decided to move ahead with a final rule establishing fee schedules for the Parenteral and Enteral Nutrition (PEN) items and services, but not the other items and services, primarily related to concerns regarding data used for calculating fee schedule amounts for items and service that are no longer paid on a reasonable charge basis. The final rule for implementing the fee schedules for PEN items and services was published on August 28, 2001 (66 FR 45173). For splints and casts, national reasonable charge amounts, updated on an annual basis by the IIC, have been used to pay for the splint and cast materials. Converting these amounts to national fee schedule amounts that are updated by the same index factor used in updating the reasonable charge amounts would result in no change in payment, or 100 percent budget-neutrality. Currently, very few IOLs are inserted in a physician's office nationally. In 2011, total allowed charges for 437 IOLs furnished to 287

beneficiaries equaled $75,914. Since IOLs are considerably low volume items furnished by very few suppliers nationally, there are some states where none of these items are furnished; therefore, charge data for use in calculating prevailing charges, even at the state level, are not available and budget-neutrality is not an issue. If the national average allowed amount for these items is used as the fee schedule amount for the few IOLs that are still inserted in a physician's office, we do not believe that total allowed charges in the first year of the fee schedule would be significantly different than what would otherwise be paid nationally under the current reasonable charge payment methodology. For 2011, the national average allowed charge for covered claims for the 287 beneficiaries receiving IOLs inserted in a physician's office was $174 ($75,914 ÷ 437). In some cases, the allowed charge for specific claims in 2011 was less than $174 and in other cases the allowed charge was more than $174. However, given the low volume of items furnished nationally, the budget impact of paying all of the approximately 437 claims based on the national average allowed amount would be negligible. We believe establishing budget-neutral fee schedule amounts for splints and casts, and IOLs inserted in a physician's office will save government resources in calculating the reasonable charge payment for the low volume items. We are proposing to establish fee schedules for these items effective for paying claims with dates of service on or after January 1, 2014.

B. Provisions of the Proposed Regulations

For the reasons we articulated above, we propose, under section 1842(s) of the Act, to implement fee schedules for splints and casts, and IOLs inserted in a physician's office falling under the category of medical supplies. In addendum C of this proposed rule, we have inserted the current 2013 reasonable charge amounts for splints, casts and IOLs inserted in a physician's office. The splints and casts are payment amount limits updated by the CPI–U factor ending with June of the preceding year, in this case June 2012. The IOLs inserted in physician's office estimates the 2012 average allowed charge. We would not have the entire calendar year estimates for 2013 average allowed charge for IOLs inserted in a physician's office in order to implement the fee schedule amounts for these items effective for paying claims with dates of service on or after January 1, 2014; therefore, we are using the estimate of the 2012 average allowed charge. The final fee schedule amount will be specified in the final rule. We currently do not have the percentage change in the CPI–U for the 12-month period ending with June of 2013 to update the fee-schedule amounts for splints and casts. Specifically, we are proposing to amend 42 CFR § 414.106 and § 414.100 to include the general rule for updating the fee schedules for splints, casts and IOLs inserted in a physician's office. We are also proposing to add § 414.106 and § 414.108 to set forth the fee schedule methodology and updates as explained above for splints, casts, and IOLs inserted in a physician's office. Subject to coinsurance and deductible rules, Medicare payment for these services is to be equal to the lower of the actual charge for the item or the amount determined under the applicable fee schedule payment methodology.

For splints and casts, we propose national fee schedule amounts for items furnished from January 1, 2014, thru December 31, 2014, based on 2013 reasonable charges updated by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June 2013. For subsequent years, the fee schedule amounts would be updated by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the preceding year, reduced by the productivity adjustment as described in section 1886(b)(3)(B)(xi)(II) of the Act.

For IOLs inserted in a physician's office, we propose national fee schedule amounts for items furnished from January 1, 2014, thru December 31, 2014, based on the national average allowed charge for the item from January 1, 2012 through December 31, 2012, updated by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 24-month period ending with June 2013. For subsequent years, the fee schedule amounts would be updated by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the preceding year, reduced by the productivity adjustment as described in section 1886(b)(3)(B)(xi)(II) of the Act.

VII. DMEPOS Technical Amendments and Corrections

A. Background

Medicare pays for various DMEPOS items and services based on payment rules that are set forth in section 1834 of the Act and 42 CFR Part 414, Subpart D. We propose to make three minor, conforming technical amendments to the existing DMEPOS payment regulations (the title of Subpart D and 42 CFR § 414.200 and § 414.226).

B. Proposed Technical Amendments and Corrections

Below are the proposed technical amendments.

- We propose to modify the title of "Subpart D—Payment for Durable Medical Equipment, Prosthetic and Orthotic Devices" to read "Subpart D—Payment for Durable Medical Equipment, Prosthetic and Orthotic Devices, and Surgical Dressings" to reflect that payment for surgical dressings is addressed under this subpart at § 414.220(g).
- In subpart § 414.200, we propose to modify the phrase "This subpart implements sections 1834 (a) and (h) of the Act by specifying how payments are made for the purchase or rental of new and used durable medical equipment and prosthetic and orthotic devices for Medicare beneficiaries." as follows: "This subpart implements sections 1834 (a), (h), and (i) of the Act by specifying how payments are made for the purchase or rental of new and used durable medical equipment, prosthetic and orthotic devices, and surgical dressings for Medicare beneficiaries." The Omnibus Budget Reconciliation Act of 1993 amended section 1834 of the Act by adding subsection (i), mandating payment on a fee schedule basis for surgical dressings. Although § 414.220(g) addresses this requirement, the regulation at § 414.200 was not updated to indicate that this subpart implements section 1834(i) in addition to sections 1834(a) and (h) of the Act.
- Section 1834(a)(9)(D) of the Act provides authority for creating separate classes of oxygen and oxygen equipment. Section 1834(a)(9)(D)(ii) of the Act prohibits CMS from creating separate classes of oxygen and oxygen equipment that result in expenditures for any year that are more or less than expenditures which would have been made if the separate classes had not been created. In other words, the new classes and payment amounts for oxygen and oxygen equipment must be established so that creating the new classes is annually budget-neutral. In November 2006, we published a final rule establishing separate classes for oxygen and oxygen equipment and included a methodology for meeting the requirements of section 1834(a)(9)(D)(ii) of the Act by applying annual reductions to the monthly fee schedule amounts for the stationary oxygen

equipment class at § 414.226(c)(1)(i) in order to establish budget neutrality for total oxygen and oxygen expenditures for all oxygen classes. Increases in expenditures for oxygen and oxygen equipment that are attributed to higher payment amounts established for new classes of oxygen and oxygen equipment are off set by reducing the monthly payment amount for stationary oxygen equipment. Due to a drafting error in the regulation text portion of the November 2006 final rule, CMS–1304–F (71 FR 65933), 42 CFR § 414.226(c)(6) needs to be corrected. The regulation text at § 414.226(c)(6) mistakenly states that budget neutrality should be achieved by adjusting all oxygen class rates. Section 414.226(c)(6) should read that only the stationary oxygen equipment rate should be adjusted to achieve budget neutrality. Therefore, we propose that § 414.226(c)(6) be revised to read as follows: "Beginning in 2008, CMS makes an annual adjustment to the national limited monthly payment rate for items described in paragraph (c)(1)(i) of this section to ensure that such payment rates do not result in expenditures for any year that are more or less than the expenditures that would have been made if such classes had not been established."

- We are also making a technical correction to existing 42 CFR § 414.102(c) to conform the regulation governing parenteral and enteral (PEN) nutrients, equipment and supplies covered item fee schedule update with the statute. Although section 1842(s)(1)(B)(ii) of the Act is self-implementing, the PEN nutrients, equipment and supplies payment regulations at 42 CFR 414 Subpart C were not updated to reflect the application of the multifactor productivity adjustment to the CPI–U update factor for 2011 and subsequent calendar years. Therefore, we are revising § 414.102(c) of our regulations to specify that for years 2003 through 2010, the PEN items and services fee schedule amounts of the preceding year are updated by the percentage increase in the CPI–U for the 12-month period ending with June of the preceding year. For each year subsequent to 2010, the PEN items and services fee schedule amounts of the preceding year are updated by the percentage increase in the CPI–U for the 12-month period ending with June of the preceding year, reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act.

VIII. Collection of Information Requirements

A. Legislative Requirement for Solicitation of Comments

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection requirement should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

B. Requirements in Regulation Text

In section II.D. of this proposed rule, we are proposing changes to regulatory text for the ESRD PPS in CY 2014. However, the changes that are being proposed do not impose any new information collection requirements.

C. Additional Information Collection Requirements

This proposed rule does not impose any new information collection requirements in the regulation text, as specified above. However, this proposed rule does make reference to several associated information collections that are not discussed in the regulation text contained in this document. The following is a discussion of these information collections.

1. ESRD QIP

a. Proposed Expanded ICH CAHPS Reporting Measure for PY 2016 and Future Payment Years of the ESRD QIP

As stated above in section III.C.2.a of this proposed rule, we proposed to include in the PY 2016 ESRD QIP an expanded ICH CAHPS reporting measure, which assesses facility usage of the ICH CAHPS survey. Unlike the ICH CAHPS reporting measure finalized in the CY 2013 ESRD PPS final rule (77 FR 67480 through 67481), the proposed expanded ICH CAHPS reporting measure would require facilities to report (via a CMS-approved vendor) survey data to CMS once for PY 2016, and, for PY 2017 and beyond, to administer (via a CMS-approved vendor) a second ICH CAHPS survey and report the second set of survey data to CMS. Therefore, for PY 2016, we estimate the burden associated with this requirement to be the time and effort necessary for facilities to submit (via a CMS-approved vendor) survey results to CMS. For PY 2017 and future payment years, we estimate the burden associated with this requirement is the time and effort necessary for facilities to administer (via a CMS-approved vendor) a second ICH CAHPS survey and submit (via a CMS-approved vendor) the survey results to CMS.

We estimate that approximately 5,506 facilities will treat adult, in-center hemodialysis patients in PY 2016 and, therefore, will be eligible to receive a score on this measure. We further estimate that all 5,506 facilities will report (via a CMS-approved vendor) survey results to CMS, and that it will take each vendor approximately 5 minutes to do so. Therefore, the estimated total annual burden associated with meeting the measure requirements in PY 2016 is 459 hours [(5/60) hours × 5,506 facilities). According to the Bureau of Labor Statistics, the mean hourly wage of a registered nurse is $32.66/hour. Since we anticipate nurses (or administrative staff who would be paid at a lower hourly wage) will submit this data to CMS, we estimate that the aggregate cost of this requirement for PY 2016 will be $14,991 (459 hours × $32.66/hour).

We estimate that approximately 5,693 facilities will treat adult, in-center hemodialysis patients in PY 2017 and, therefore, will be eligible to receive a score on this measure. We estimate that all 5,693 facilities will administer the ICH CAHPS survey through a third-party vendor and arrange for the vendor to submit the data to CMS. We estimate that it would take each patient 30 minutes to complete the survey (to account for variability in education levels) and that approximately 103 surveys per year would be taken per facility. Interviewers from each vendor would therefore spend a total of approximately 52 hours per year with patients completing these surveys (0.5 hours * 103 surveys) or $1,698 (52 hours × $32.66) for an estimated annual burden of $9,666,714 ($1,698 per facility × 5,693 facilities).[9] We previously estimated that the aggregate cost of submitting survey data to CMS is $14,991. Therefore, we estimate that the

[9] We note that this total represents an underestimate of the overall burden because it does not include time costs for patients.

total annual burden for ESRD facilities to comply with the collection of information requirements associated with the proposed expanded ICH CAHPS measure for PY 2017 and future payment years would be approximately $9,681,705 ($9,666,714 + $14,991) across all ESRD facilities.

b. Proposed Data Validation Requirements for the PY 2016 ESRD QIP

Section III.C.13 of the proposed rule outlines our data validation proposals. We proposed to randomly sample records from 300 facilities; each sampled facility would be required to produce up to 10 records; and the sampled facilities will be reimbursed by our validation contractor for the costs associated with copying and mailing the requested records. The burden associated with this validation requirement is the time and effort necessary to submit validation data to a CMS contractor. We estimate that it will take each facility approximately 2.5 hours to comply with these requirements. If 300 facilities are tasked with providing the required documentation, the estimated annual burden for these facilities across all facilities would be 750 hours (300 facilities × 2.5 hours) at a total of $24,495 (750 hours × $32.66/hour) or $81.65 ($24,495/300 facilities) per facility in the sample.

2. The discussion on clarifying the definition of routinely purchased DME does not contain any new information collection requirements.

3. The clarification of the the 3-year Minimum Lifetime Requirement for DME does not contain any new information collection requirements.

4. The proposed implementation of Budget-Neutral Fee Schedules for Splints, Casts and Intraocular Lenses does not contain any new information collection requirements.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp#TopOfPage.*

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, [CMS–1526–P], Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov.*

IX. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

X. Economic Analyses

A. Regulatory Impact Analysis

1. Introduction

We examined the impacts of this proposed rule as required by Executive Order 12866 (September 30, 1993, Regulatory Planning and Review) and Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated economically significant under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. We have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the proposed rule. We solicit comments on the regulatory impact analysis provided.

2. Statement of Need

This rule proposes a number of routine updates for renal dialysis services in CY 2014, proposes to implement the fourth year of the ESRD PPS transition, and proposes to make several policy changes to the ESRD PPS. These include proposed updates and changes to the ESRD PPS base rate, wage index values, the wage index budget-neutrality adjustment factor, and the outlier payment policy. This rule will also implement section 1881(b)(14)(I), which requires the Secretary, by comparing per patient utilization from 2007 with such data from 2012, to reduce the single payment amount to reflect the Secretary's estimate of the change in the utilization of ESRD-related drugs and biologicals. Failure to publish this proposed rule would result in ESRD facilities not receiving appropriate payments in CY 2014.

This rule proposes to implement the ESRD QIP for PY 2016 and beyond by proposing to adopt measures, scoring, and payment reductions to incentivize improvements in dialysis care as directed by section 1881(h) of the Act. Failure to propose requirements for the PY 2016 ESRD QIP would prevent continuation of the ESRD QIP beyond PY 2015.

3. Overall Impact

We estimate that the proposed revisions to the ESRD PPS will result in a decrease of approximately $970 million in payments to ESRD facilities in CY 2014, which includes the amount associated with the increase in the ESRDB market basket reduced by the productivity adjustment, updates to outlier threshold amounts, the inclusion of the Pacific Rim ESRD facilities, updates to the wage index, and the drug utilization adjustment required by section 1881(b)(14)(I), as added by section 632(a) of ATRA.

For PY 2016, we estimate that the proposed requirements related to the ESRD QIP will cost approximately $39.5 thousand and the predicted payment reductions will equal about $26.4 million to result in a total impact from the proposed ESRD QIP requirements of $26.4 million. For PY 2017 and future payment years, we expect the costs associated with the collection of information requirements for the expanded ICH CAHPS measure in the proposed ESRD QIP to be approximately $9.7 million.

We estimate that the proposed changes for implementing the fee schedule amounts from reasonable charge payments will be budget neutral and will have no impact to DMEPOS providers of splints, casts and intraocular lenses inserted in a physician's office.

We estimate that our proposed clarification of the definition of routinely purchased DME and re-classification of certain items as cap rental items would impact certain DMEPOS providers. We estimate that the clarification of the 3-year minimum lifetime requirement for DME would have no impact on DMEPOS suppliers.

B. Detailed Economic Analysis

1. CY 2014 End-Stage Renal Disease Prospective Payment System

a. Effects on ESRD Facilities

To understand the impact of the changes affecting payments to different categories of ESRD facilities, it is necessary to compare estimated payments in CY 2013 to estimated payments in CY 2014. To estimate the impact among various types of ESRD facilities, it is imperative that the estimates of payments in CY 2013 and CY 2014 contain similar inputs. Therefore, we simulated payments only for those ESRD facilities for which we are able to calculate both current payments and new payments.

For this proposed rule, we used the December 2012 update of CY 2012 National Claims History file as a basis for Medicare dialysis treatments and payments under the ESRD PPS. We updated the 2012 claims to 2013 and 2014 using various updates. The updates to the ESRD PPS base rate are described in section II.B of this proposed rule. Table 12 shows the impact of the estimated CY 2014 ESRD payments compared to estimated payments to ESRD facilities in CY 2013.

TABLE 12—IMPACT OF PROPOSED CHANGES IN PAYMENTS TO ESRD FACILITIES FOR CY 2014 PROPOSED RULE

Facility type	Number of facilities	Number of treatments (in millions)	Effect of 2014 changes in outlier policy [4] (percent)	Effect of 2014 changes in wage indexes (percent)	Effect of 2014 changes in market basket minus productivity update (percent)	Effect of 2014 changes in base rate due to drug utilization (percent)	Effect of total 2014 changes [5] (percent)
	A	B	C	D	E	F	G
All Facilities	5,771	38.1	0.4	0.0	2.5	−12.0	−9.4
Type:							
Freestanding	5,270	35.4	0.4	0.0	2.5	−12.0	−9.4
Hospital based	501	2.7	0.3	0.1	2.5	−11.9	−9.3
Ownership Type:							
Large dialysis organization	3,769	25.9	0.4	0.0	2.5	−12.0	−9.4
Regional chain	885	6.1	0.4	0.0	2.5	−12.0	−9.4
Independent	614	3.9	0.2	0.1	2.5	−12.0	−9.5
Hospital based [1]	400	2.1	0.2	0.1	2.5	−11.9	−9.4
Unknown	103	0.2	0.3	−0.2	2.5	−12.0	−9.6
Geographic Location:							
Rural	1,257	6.3	0.4	−0.1	2.5	−12.0	−9.5
Urban	4,514	31.8	0.4	0.0	2.5	−12.0	−9.4
Census Region:							
East North Central	946	5.7	0.4	−0.2	2.5	−11.9	−9.5
East South Central	477	2.9	0.5	−0.2	2.5	−11.9	−9.5
Middle Atlantic	634	4.6	0.4	0.5	2.5	−12.0	−9.0
Mountain	340	1.8	0.3	0.1	2.5	−12.0	−9.4
New England	170	1.3	0.4	0.2	2.5	−12.0	−9.2
Pacific [2]	684	5.3	0.1	0.4	2.5	−12.0	−9.3
Puerto Rico and Virgin Islands	41	0.3	0.4	−2.3	2.5	−11.9	−11.5
South Atlantic	1,288	8.8	0.5	−0.3	2.5	−12.0	−9.6
West North Central	416	2.0	0.4	−0.1	2.5	−12.0	−9.5
West South Central	775	5.5	0.5	−0.1	2.5	−11.9	−9.5
Facility Size:							
Less than 4,000 treatments [3]	1,044	2.6	0.4	0.0	2.5	−12.0	−9.4
4,000 to 9,999 treatments	2,157	10.4	0.4	−0.1	2.5	−12.0	−9.5
10,000 or more treatments	2,400	24.7	0.4	0.0	2.5	−12.0	−9.4
Unknown	170	0.4	0.4	−0.1	2.5	−12.0	−9.5
Percentage of Pediatric Patients:							
Less than 2%	5,662	37.7	0.4	0.0	2.5	−12.0	−9.4
Between 2% and 19%	44	0.3	0.3	0.0	2.5	−11.9	−9.5
Between 20% and 49%	6	0.0	0.1	−0.3	2.5	−12.0	−9.9
More than 50%	59	0.1	0.0	0.1	2.5	−12.0	−9.7

[1] Includes hospital-based ESRD facilities not reported to have large dialysis organization or regional chain ownership.
[2] Includes ESRD facilities located in Guam, American Samoa, and the Northern Mariana Islands.
[3] Of the 1,044 ESRD facilities with less than 4,000 treatments, only 375 qualify for the low-volume adjustment. The low-volume adjustment is mandated by Congress, and is not applied to pediatric patients. The impact to these low-volume facilities is a 9.5 percent decrease in payments.
[4] Includes the effect of including the Pacific Rim ESRD facilities of Guam, American Samoa, and the Northern Mariana Islands into the PPS.
[5] Includes the effect of Market Basket minus productivity increase of 2.5 percent to the ESRD PPS base rate and the effect of the $29.52 decrease in the base rate due to the drop in drug utilization.
Note: Totals do not necessarily equal the sum of rounded parts, as percentages are multiplicative, not additive.

Column A of the impact table indicates the number of ESRD facilities for each impact category and column B indicates the number of dialysis treatments (in millions). The overall effect of the proposed changes to the outlier payment policy described in section II.B.6. of this proposed rule is shown in column C. For CY 2014, the

impact on all facilities as a result of the changes to the outlier payment policy would be a 0.4 percent increase in estimated payments. The estimated impact of the changes to outlier payment policy ranges from a 0.0 percent to a 0.5 percent increase. Nearly all ESRD facilities are anticipated to experience a positive effect in their estimated CY 2014 payments as a result of the proposed outlier policy changes.

Column D shows the effect of the wage index on ESRD facilities and reflects the CY 2014 wage index values for the ESRD PPS payments. Facilities located in the census region of Puerto Rico and the Virgin Islands would receive a 2.3 percent decrease in estimated payments in CY 2014. Since most of the facilities in this category are located in Puerto Rico, the decrease is primarily due to the reduction in the wage index floor, (which only affects facilities in Puerto Rico in CY 2014). The other categories of types of facilities in the impact table show changes in estimated payments ranging from a 0.3 percent decrease to a 0.5 percent increase due to the update of the wage index.

Column E shows the effect of the ESRDB market basket increase minus productivity adjustment. The impact on all facilities would be a 2.5 percent increase.

Column F shows the effect of the drug utilization adjustment required by section 1881(b)(14)(I). For CY 2014, the impact on all facilities as a result of the $29.52 decrease to the base rate, as described in section II.B.2.a., would be a 12 percent decrease in estimated payments. The estimated impact ranges from 11.9 percent to 12 percent decrease.

Column G reflects the overall impact (that is, the effects of the proposed outlier policy changes, the proposed wage index, the effect of the ESRDB market basket increase minus productivity adjustment, and the effect of the drug utilization adjustment required by section 1881(b)(14)(I). We expect that overall, ESRD facilities will experience a 9.4 percent decrease in estimated payments in 2014. ESRD facilities in Puerto Rico and the Virgin Islands are expected to receive an 11.5 percent decrease in their estimated payments in CY 2014. This larger decrease is primarily due to the negative impact of the wage index. The other categories of types of facilities in the impact table show negative impacts ranging from a decrease of 9.9 percent to 9.0 percent in their 2014 estimated payments.

b. Effects on Other Providers

Under the ESRD PPS, ESRD facilities are paid directly for the renal dialysis bundle and other provider types such as laboratories, DME suppliers, and pharmacies, may no longer bill Medicare directly for renal dialysis services. Rather, effective January 1, 2011, such other providers can only furnish renal dialysis services under arrangements with ESRD facilities and must seek payment from ESRD facilities rather than Medicare. Under the ESRD PPS, Medicare pays ESRD facilities one payment for renal dialysis services, which may have been separately paid to suppliers by Medicare prior to the implementation of the ESRD PPS. Therefore, in CY 2014, the fourth year of the ESRD PPS, we estimate that the proposed ESRD PPS will have zero impact on these other providers.

c. Effects on the Medicare Program

We estimate that Medicare spending (total Medicare program payments) for ESRD facilities in CY 2014 will be approximately $8 billion. This estimate takes into account a projected increase in fee-for-service Medicare dialysis beneficiary enrollment of 3.8 percent in CY 2014.

d. Effects on Medicare Beneficiaries

Under the ESRD PPS, beneficiaries are responsible for paying 20 percent of the ESRD PPS payment amount. As a result of the projected 9.4 percent overall decrease in the proposed ESRD PPS payment amounts in CY 2014, we estimate that there will be a decrease in beneficiary co-insurance payments of 9.4 percent in CY 2014, which translates to approximately $190 million.

e. Alternatives Considered

For this proposed rule, we proposed to implement the full reduction required by section 1881(b)(14)(I) in CY 2014. In particular, we proposed a one-time reduction of $29.52 to the ESRD PPS base rate. We considered proposing to implement the reduction using a transition. For example, we considered transitioning the reduction over a 2 or 3-year period. We chose to implement the full reduction by reducing the ESRD PPS base rate by an adjustment to reflect change in the utilization of ESRD-related drugs and biologicals by comparing utilization data from 2007 with such data from 2012.

2. End-Stage Renal Disease Quality Incentive Program

a. Effects of the PY 2016 ESRD QIP

The ESRD QIP provisions are intended to prevent possible reductions in the quality of ESRD dialysis facility services provided to beneficiaries as a result of payment changes under the ESRD PPS by implementing a ESRD QIP that reduces ESRD PPS payments by up to 2 percent for dialysis facilities that fail to meet or exceed a TPS with respect to performance standards established by the Secretary with respect to certain specified measures. The methodology that we are proposing to determine a facility's TPS is described in section III.C.11 of this proposed rule. Any reductions in ESRD PPS payments as a result of a facility's performance under the PY 2016 ESRD QIP would begin with services furnished on January 1, 2016.

As a result, based on the ESRD QIP outlined in this proposed rule, we estimate that, of the total number of dialysis facilities (including those not receiving an ESRD QIP TPS), approximately 36 percent or 2,069 of the facilities would likely receive a payment reduction in PY 2016. Facilities that do not receive a TPS are not eligible for a payment reduction.

The ESRD QIP impact assessment assumes an initial count of 5,771 dialysis facilities paid through the PPS. Table 13 shows the overall estimated distribution of payment reductions resulting from the PY 2016 ESRD QIP.

TABLE 13—ESTIMATED DISTRIBUTION OF PY 2016 ESRD QIP PAYMENT REDUCTIONS

Payment reduction percent	Number of facilities	Percent of facilities
0.0	3,417	62.3
0.5	994	18.1
1.0	583	10.6
1.5	280	5.1
2.0	212	3.9

Note: This table excludes 285 facilities that did not receive a score because they did not have enough data to receive a Total Performance Score.

To estimate whether or not a facility would receive a payment reduction under the proposed approach, we scored each facility on achievement and improvement on several measures we have previously finalized and for which there were available data from CROWNWeb and Medicare claims. Measures used for the simulation are shown in Table 14.

TABLE 14—DATA USED TO ESTIMATE PY 2016 ESRD QIP PAYMENT REDUCTIONS

Measure	Period of time used to calculate achievement thresholds, performance standards, benchmarks, and improvement thresholds	Performance period
Hemoglobin Greater Than 12 g/dL	Jan 2012–Jun 2012	July 2012–Dec 2012.
Vascular Access Type:		
% Fistula	Jan 2011–Dec 2011	Jan 2012–Dec 2012.
% Catheter	Jan 2011–Dec 2011	Jan 2012–Dec 2012.
Kt/V:		
Adult HD	Jan 2011–Dec 2011	Jan 2012–Dec 2012.
Adult PD	Jan 2011–Dec 2011	Jan 2012–Dec 2012.
Pediatric HD	Jan 2011–Dec 2011	Jan 2012–Dec 2012.
Hypercalcemia	Jan 2011–Dec 2011	May 2012–Dec 2012.

Clinical measures with less than 11 cases for a facility were not included in that facility's Total Performance Score. Each facility's Total Performance Score was compared to the estimated minimum Total Performance Score and the payment reduction table found in section III.C.11 of this proposed rule. Facilities were required to have a score on at least one clinical measure to receive a Total Performance Score. For these simulations, the NHSN Bloodstream Infection in Hemodialysis Outpatients and Patient Informed Consent for Anemia Treatment clinical measures, as well as the reporting measures were not included due to lack of data availability. Therefore, the simulated facility Total Performance Scores were calculated using only some of the clinical measure scores.

To estimate the total payment reductions in PY 2016 for each facility resulting from this proposed rule, we multiplied the total Medicare payments to the facility during the one year period between January 2012 and December 2012 by the facility's estimated payment reduction percentage expected under the ESRD QIP, yielding a total payment reduction amount for each facility: (Total ESRD payment in January 2012 through December 2012 times the estimated payment reduction percentage). For PY 2016 the total payment reduction for all of the 2,069 facilities expected to receive a reduction is approximately $26.4 million ($26,355,878). Further, we estimate that the total costs associated with the collection of information requirements for PY 2016 described in section VII.B.2 of this proposed rule would be approximately $15 thousand for all ESRD facilities. As a result, we estimate that ESRD facilities will experience an aggregate impact of $26.4 million ($39,486 + $26,355,878= $26,395,364) in PY 2016, as a result of the PY 2016 ESRD QIP.

Table 15 below shows the estimated impact of the finalized ESRD QIP payment reductions to all ESRD facilities for PY 2016. The table details the distribution of ESRD facilities by facility size (both among facilities considered to be small entities and by number of treatments per facility), geography (both urban/rural and by region), and by facility type (hospital based/freestanding facilities). Given that the time periods used for these calculations will differ from those we propose to use for the PY 2016 ESRD QIP, the actual impact of the PY 2016 ESRD QIP may vary significantly from the values provided here.

TABLE 15—IMPACT OF PROPOSED QIP PAYMENT REDUCTIONS TO ESRD FACILITIES FOR PY 2016Q

	Number of facilities	Number of Medicare treatments 2012 (in millions) [3]	Number of facilities with QIP score	Number of facilities expected to receive a payment reduction	Payment reduction (percent change in total ESRD payments)
All Facilities	5,771	38.1	5,486	2,069	−0.35
Facility Type:					
Freestanding	5,270	35.4	5,116	1,854	−0.32
Hospital-based	501	2.7	370	215	−0.67
Ownership Type:					
Large Dialysis	3,769	25.9	3,710	1,228	−0.29
Regional Chain	885	6.1	849	355	−0.36
Independent	614	3.9	572	292	−0.52
Hospital-based (non-chain)	400	2.1	289	169	−0.66
Unknown	103	0.2	66	25	−0.47
Facility Size:					
Large Entities	4,654	32.0	4,559	1,583	−0.30
Small Entities [1]	1,014	5.9	861	461	−0.57
Unknown	103	0.2	66	25	−0.47
Urban/Rural Status:					
Rural	1,257	6.3	1,191	416	−0.31
Urban	4,514	31.8	4,295	1,653	−0.35
Census Region:					
Northeast	786	5.8	741	309	−0.40
Midwest	1,325	7.7	1,233	478	−0.37
South	2,501	17.1	2,440	923	−0.34
West	998	7.0	966	302	−0.27

TABLE 15—IMPACT OF PROPOSED QIP PAYMENT REDUCTIONS TO ESRD FACILITIES FOR PY 2016Q—Continued

	Number of facilities	Number of Medicare treatments 2012 (in millions) [3]	Number of facilities with QIP score	Number of facilities expected to receive a payment reduction	Payment reduction (percent change in total ESRD payments)
US Territories [2]	161	0.5	106	57	−0.66
Census Division:					
Pacific Rim	7	0.1	7	5	−0.92
East North Central	946	5.7	868	354	−0.38
East South Central	477	2.9	465	147	−0.27
Middle Atlantic	634	4.6	595	254	−0.42
Mountain	340	1.8	325	82	−0.21
New England	170	1.3	154	58	−0.28
Pacific	677	5.2	652	224	−0.30
South Atlantic	1,288	8.8	1,245	490	−0.37
West North Central	416	2.0	383	129	−0.34
West South Central	775	5.5	754	298	−0.34
US Territories [2]	41	0.3	38	28	−0.86
Facility Size (# of total treatments):					
Less than 4,000 treatments	1,044	2.6	853	273	−0.36
4,000–9,999 treatments	2,157	10.4	2,136	730	−0.30
Over 10,000 treatments	2,400	24.7	2,384	1,027	−0.38
Unknown	170	0.4	113	39	−0.41

[1] Small Entities include hospital-based and satellite facilities and non-chain facilities based on DFC self-reported status.
[2] Includes Puerto Rico and Virgin Islands.
[3] Based on claims data through December 2012.

b. Alternatives Considered for the PY 2016 ESRD QIP

In the proposed PY 2016 ESRD QIP, we selected measures that we believe are important indicators of patient outcomes and quality of care as discussed in section III.C of this proposed rule. Poor management of anemia, for example, can lead to avoidable hospitalizations, decreased quality of life, and death. In order to provide strong incentives to improve patient outcomes in this clinically important area, we considered proposing a clinical measure for Pediatric Iron Therapy. However, upon further review we recognized that we lacked the necessary baseline data to establish achievement thresholds, performance standards, and benchmarks. We, therefore, proposed a reporting measure in order to gather the data we will need to introduce a clinical measure in the future. In the case of the NHSN Bloodstream Event in Hemodialysis Outpatient measure, we considered proposing a reporting measure instead of a clinical measure, because we lacked the necessary baseline data to establish achievement thresholds, performance standards, and benchmarks. However, we decided not to do so. Due to the great impact hospital acquired infections have upon patients and the industry, we believe it is important to begin assessing facilities on the number of these events rather than on merely whether they report these events as soon as possible.

Similarly, in the case of the Patient Informed Consent for Anemia Treatment measure, we considered proposing a reporting measure instead of a clinical measure, because we lacked the necessary baseline data to establish achievement thresholds, performance standards, and benchmarks. We decided not to do because we believe that providing counseling on the risks and benefits of anemia treatment, and seeking informed consent for such treatment, is already a standard of clinical care in the ESRD provider community. We also considered proposing the Standardized Hospitalization Ratio Admissions (SHR) measure and the Standardized Mortality Ratio (SMR) measure as reporting measures for the PY 2016 ESRD QIP. We decided not to do so due to outstanding concerns about the measures' validity and reliability. As an alternative, we proposed the Comorbidity reporting measure to provide a reliable source of data that we can use to properly risk-adjust SHR and SMR clinical measures (should we propose to adopt such measures in the future), and to improve our understanding of the risk factors that contribute to morbidity and mortality in the ESRD patient population.

In developing the proposed scoring methodology for the PY 2016 ESRD QIP, we considered several alternatives. For example, we considered weighting the clinical measures at 80 percent and the reporting measures at 20 percent of the Total Performance Score. We ultimately decided to propose the weighting methodology used in the PY 2015 ESRD QIP because the ratio of clinical to reporting measures did not change significantly, and also because we wanted to retain a strong incentive for facilities to meet the requirements for the reporting measures. We also considered a number of ways to establish achievement thresholds and benchmarks for the NHSN clinical measure. For example, we considered using baseline data from CYs 2012 through 2013 to set achievement thresholds and benchmarks. However, we ultimately decided to propose to use data from CY 2014 when establishing baseline data for scoring purposes, because facilities were not required to submit twelve full months of NHSN data during CY 2012–2013, and rates of healthcare-acquired infections are susceptible to seasonal variability. In light of the importance of monitoring and preventing infections in the ESRD population, we decided that it would be preferable to propose a clinical measure with equivalent baseline and performance periods, rather than a reporting measure that would have less of a direct impact on clinical practice. We also considered a number of ways to score the Patient Informed Consent for Anemia Treatment clinical measure. In this case, we lacked baseline data that could be used to establish achievement thresholds and benchmarks, so we considered proposing a reporting

measure in place of the clinical measure. In light of the importance of the measure, however, we ultimately decided to propose a clinical measure in order to provide a stronger incentive for facilities to obtain informed consent from patients receiving anemia treatment. In considering possible scoring methodologies for the measure, we specifically considered setting the achievement threshold at 100 percent because we believe that facilities should always obtain informed consent from patients receiving ESA. However, we recognized that unexpected events in the clinical setting might preclude the possibility of obtaining informed consent in every instance, so we ultimately decided to propose to set the achievement threshold for the measure at 92 percent. We selected 92 percent because this would allow facilities with 26 patients to meet the achievement threshold if they failed to obtain informed consent from 2 patients (see section III.C.8 for more details).

3. DMEPOS Provisions

a. Effects of the Implementation of Fee Schedules for Splints, Casts and IOLs

The implementation of fee schedules for use in paying claims for splints, casts, and IOLs inserted in a physician's office would result in administrative savings associated with determining and implementing the Medicare allowed payment amounts for these items. As a result, the agency would save approximately $94,000 in annual administrative expenses for calculating reasonable charge payment amounts and maintaining multiple pricing files necessary for making payment on a reasonable charge basis.

b. Clarification of the 3-Year MLR for DME

We expect no significant impact regarding application of the 3-year MLR for DME. As we noted in the final regulation for the 3-year MLR, we believe that a vast majority of the categories of items that were classified as DME before January 1, 2012, did function for 3 or more years (76 FR 70289). The 3-year MLR is designed to represent a minimum threshold for determination of durability for equipment that is consistent with the statutory DME payment provisions and applies on a prospective basis, effective January 1, 2012. CMS recognizes that the healthcare industry and beneficiaries have come to rely on items that have qualified as DME prior to January 1, 2012, regardless of whether those items met the 3-year MLR set forth at § 414.202. We note that given that reliance and consistent with the regulation at § 414.202, CMS will not reopen those prior decisions and reclassify the equipment in light of the new 3-year standard. We believe that continuing the Medicare coverage for all the items that qualified as DME on or prior to January 1, 2012, would avoid disrupting the continuity of care for the beneficiaries that received these items for medical treatment prior to January 1, 2012. As noted in the final rule (76 FR 70301, 70311) it is difficult to predict how many different types of new devices will be introduced in the market in the future that may or may not meet the 3-year MLR. However, even absent the 3-year MLR, it is likely that new products which do not meet the 3-year MLR will not qualify as DME based upon our current interpretation of the criteria for DME. It is possible that with the clarification of the 3-year MLR, we will limit what can be covered as DME compared to what we would have covered as DME absent this regulatory clarification. Additionally, to the extent the regulatory change is binding to some new products, there may be reduced program cost. The final rule does apply to items that were classified as DME on or before January 1, 2012 which tends to lessen the overall impact to the program. In general, we expect that the final rule (76 FR 70311) and clarification we are now proposing of the 3-year MLR would have a minimal, if any, savings impact on the expenditures under program. This is because the vast majority if items classified as DME in the past have had lifetimes of 3 years or more and so there would be very few instances, if any, where this clarification will have any impact on classification of items as DME.

c. Definition of Routinely Purchased DME

As discussed in section IV of this rule, this rule would clarify the definition of routinely purchased equipment set forth at section § 414.220(a) and would classify an expensive item of DME or accessory (over $150) as a capped rental item if it was not acquired by purchase on a national basis at least 75 percent of the time during the period July 1986 through June 1987. Because concerns were brought to our attention on the application of the definition of routinely purchased DME, we performed a review of the approximately 250 HCPCS codes assigned to the routinely purchased category of DME in excess of $150. Based on our review, and given the definition of routinely purchased equipment set forth at section § 414.220, we would classify such items in the capped rental category if the items were not acquired by purchase on a national basis at least 75 percent of the time during the period July 1986 through June 1987.

As shown in Table 11 of section IV of the preamble, our review identified 80 current HCPCS codes requiring reclassification from routinely purchased DME to capped rental DME. The majority of codes relate to manual wheelchairs and wheelchair accessories. We have displayed in Column B accessories of complex rehabilitative power wheelchairs that would be classified as capped rental items and for which suppliers must also offer to the beneficiary on a lump sum purchase basis in accordance with § 414.229(h)(3) of the regulations. In addition, we have displayed in Table 16 below and Column B of Table 11 of section IV of the preamble approximately 14 codes which would be reclassified in two stages effective July 1, 2016, rather than January 1, 2014, for all items included in competitive bidding programs other than those furnished in the Round 1 Recompete programs and areas; and on January 1, 2017, for those items furnished as part of the Round I Recompete competitive bidding programs.

TABLE 16—ITEMS RECLASSIFIED TO CAPPED RENTAL DME CATEGORY EFFECTIVE JULY 1, 2016*

HCPCS category	HCPCS
Support Surfaces	E0197
Walkers	E0140 E0149
Wheelchairs Options/Accessories	E0985 E1020 E1028 E2228 E2368 E2369 E2370 E2375 K0015 K0070
Wheelchair Seating	E0955

* Items furnished in accordance with Round 1 Recompete contracts would be reclassified effective January 1, 2017.

In Table 17 below, we show estimated savings associated with making payment on a capped rental basis rather than a lump sum purchase basis for items that would be reclassified.

TABLE 17—IMPACT OF ITEMS RECLASSIFIED TO CAPPED RENTAL DME CATEGORY

FY	Impact to the federal government (in $ millions)
2014	−20
2015	−20
2016	−20
2017	−30
2018	−40

The decrease in expenditures is expected because the changes would eliminate the lump sum purchase method for the certain items, and instead payment would be made under the monthly rental method resulting in lower aggregate payments because many beneficiaries do not rent items for as long as 13 months. In order to prepare our impact on the Medicare program, we reviewed claims data and utilization for all items currently classified as capped rental items from 2009 through 2011 and determined that the weighted average number of allowed monthly rental services for beneficiaries receiving capped rental items during that period was 8 months. We therefore used 8 months as the estimated number of months beneficiaries would rent items in Table 11 of section IV of the preamble that would not have a purchase option. All anticipated savings include the price growth for the covered item fee schedule update factors for DME mandated by section 1834(a)(14) of the Act. In addition, our estimate takes into account projected changes in DME beneficiary enrollment. Furthermore, we reflected the savings for these items that are currently included under any existing competitive bidding program and which will be reclassified from routinely purchased to capped rental effective July 1, 2016.

From table 11 of section IV of the preamble above, entitled Routinely Purchased Items Reclassified to Capped Rental, for items that would be paid on a capped rental basis with no purchase option, the highest volume items in terms of 2012 allowed charges are:

TABLE 18—THREE HIGHEST VOLUME ROUTINELY PURCHASED ITEMS RECLASSIFIED TO CAPPED RENTAL

HCPCS	Item	Purchase fee	Allowed charges	Code added
E0760	Ultrasonic Bone Growth Stimulator	$3,514	$21,370,310	1997
E2510	Speech Generating Device	7,356	20,170,162	2001
E1161	Tilt In Space Manual Wheelchair	2,571	18,666,674	2003

The allowed charges in 2012 for these three items combined were approximately $60 million, which makes up almost half of approximately $130 million in allowed charges for items that would no longer be eligible for purchase. Under the capped rental payment rules, these items would be rented for up to 13-continuous months, following which title to the equipment would transfer from the supplier to the beneficiary.

C. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 19 below, we have prepared an accounting statement showing the classification of the transfers and costs associated with the various provisions of this proposed rule.

TABLE 19—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS/SAVINGS

Category	Transfers
ESRD PPS for CY 2014	
Annualized Monetized Transfers	$−780 million.
From Whom to Whom	Federal government to ESRD providers.
Increased Beneficiary Co-insurance Payments	$−190 million.
From Whom to Whom	Beneficiaries to ESRD providers.
ESRD QIP for PY 2016	
Annualized Monetized Transfers	−$26.4 million *
From Whom to Whom	Federal government to ESRD providers.
Category	Costs
Annualized Monetized ESRD Provider Costs	$39.5 thousand **

DME Definition of Routinely Purchased DME

Category	Transfers			
Annualized Monetized Transfer Payments	−$25.3 million −$25.7 million	2013 2013	7% 3%	2014–2018 2014–2018
From Whom to Whom	Federal government to Medicare providers.			

* It is the reduced payment to the ESRD facilities, which fall below the quality standards as stated in section III.C.11 of this proposed rule.
** It is the cost associated with the collection of information requirements for all ESRD facilities.

XI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (September 19, 1980, Pub. L. 96–354) (RFA) requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Approximately 18 percent of ESRD dialysis facilities are considered small entities according to the Small Business Administration's (SBA) size standards, which classifies small businesses as those dialysis facilities having total revenues of less than $35.5 million in any 1 year. Individuals and States are not included in the definitions of a small entity. For more information on SBA's size standards, see the Small Business Administration's Web site at *http://www.sba.gov/content/small-business-size-standards* (Kidney Dialysis Centers are listed as 621492 with a size standard of $35.5 million).

We do not believe ESRD facilities are operated by small government entities such as counties or towns with populations of 50,000 or less, and therefore, they are not enumerated or included in this estimated RFA analysis. Individuals and States are not included in the definition of a small entity.

For purposes of the RFA, we estimate that approximately 18 percent of ESRD facilities are small entities as that term is used in the RFA (which includes small businesses, nonprofit organizations, and small governmental jurisdictions). This amount is based on the number of ESRD facilities shown in the ownership category in Table 12. Using the definitions in this ownership category, we consider the 614 facilities that are independent and the 400 facilities that are shown as hospital-based to be small entities. The ESRD facilities that are owned and operated by LDOs and regional chains would have total revenues of more than $35.5 million in any year when the total revenues for all locations are combined for each business (individual LDO or regional chain), and are not, therefore, included as small entities.

For the ESRD PPS updates proposed in this rule, a hospital-based ESRD facility (as defined by ownership type) is estimated to receive a 9.4 percent decrease in payments for CY 2014. An independent facility (as defined by ownership type) is estimated to receive a 9.5 percent decrease in payments for CY 2014.

Based on the proposed QIP payment reduction impacts to ESRD facilities for PY 2016, we estimate that of the 2,069 ESRD facilities expected to receive a payment reduction, 461 ESRD small entity facilities would experience a payment reduction (ranging from 0.5 percent up to 2.0 of total payments), as presented in Table 13 ("Estimated Distribution of PY 2016 ESRD QIP Payment Reductions") and Table 15 ("Impact of Proposed QIP Payment Reductions to ESRD Facilities for PY 2016") above. We anticipate the payment reductions to average approximately $12,738 per facility among the 2,069 facilities receiving a payment reduction, with an average of $13,810 per small entity facilities receiving a payment reduction. Using our projections of facility performance, we then estimated the impact of anticipated payment reductions on ESRD small entities, by comparing the total payment reductions for the 461 small entities expected to receive a payment reduction, with the aggregate ESRD payments to all small entities. We estimate that there are a total of 1,014 small entity facilities. For this entire group of 1,014 ESRD small entity facilities, a decrease of 0.57 percent in aggregate ESRD payments is observed.

Splints, casts and intraocular lenses (IOLs) affected by this rule are generally furnished by physicians. Approximately 95 percent of physicians are considered to be small entities for the purposes of the RFA. Individuals and states are not included in the definition of a small entity. The reasonable charge payment amounts for splints and casts are based on national reasonable charge amounts increased each year by the 12-month percentage change in the CPI–U ending June of the previous year. These national inflation-indexed charges can easily be converted to fee schedule amounts with no impact on the national Medicare payment amounts for these items. Therefore, the fee schedule amounts that would take effect on January 1, 2014, for splints and casts would be the same as the reasonable charge amounts that would take effect on January 1, 2014, for these items. This rule would have no impact on small businesses that furnish these items. Given that Medicare pays for very few intraocular lenses inserted in a physician's office, these entities do not rely on Medicare payment for these items to support their businesses. Because the fee schedule amounts that would take effect on January 1, 2014, for intraocular lenses inserted in a physician's office would be based on the national average allowed charge for the item, the payment amounts these entities would receive under the fee schedule will be, on average, the same amounts they are currently paid for these items when considering the small national volume of claims as a whole. For example, in 2011, the average allowed charge for an IOL inserted in a physician's office was $174 for just 287 cases nationwide. If a particular physician office is a small business that charges less than $174 per IOL, a national fee schedule amount of $174 could increase payment for this small business for this item. Alternatively, if a particular physician office is a small business that charges more than $174 per IOL, a national fee schedule amount of $174 could decrease payment for this small business for this item. However, with only 287 cases nationwide, implementing a national fee of $174 would not have a significant impact on any physician office that is a small business because the volume of claims indicates that the small businesses are not relying on payment for these items to fund their businesses (physician practices) as a whole. Therefore, we expect that the overall impact of this rule on small businesses that are physician offices that insert IOLs covered by Medicare would be minimal. Approximately 85 percent of suppliers of DMEPOS in general are considered to be small entities for the purposes of the RFA. We expect that the impact of moving certain expensive DME items from the routinely purchased payment class to the capped rental payment class on small business will be minimal since the suppliers would still receive 105 percent of the purchase fee for items that are rented for the full 13-month capped rental period. In addition, the supplier would retain ownership of equipment that is not used for 13 months and can furnish the equipment to another beneficiary, beginning a new, separate 13-month capped rental period for the same item.

Therefore, the Secretary has determined that this proposed rule will have a significant economic impact on a substantial number of small entities. We solicit comment on the RFA analysis provided.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Any such regulatory impact analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We do not believe this proposed rule will have a significant impact on

operations of a substantial number of small rural hospitals because most dialysis facilities are freestanding. While there are 159 rural hospital-based dialysis facilities, we do not know how many of them are based at hospitals with fewer than 100 beds. However, overall, the 159 rural hospital-based dialysis facilities will experience an estimated 10.1 percent decrease in payments. As a result, this proposed rule is estimated to have a significant impact on small rural hospitals. Therefore, the Secretary has determined that this proposed rule will have a significant impact on the operations of a substantial number of small rural hospitals.

XII. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year $100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold is approximately $141 million. This proposed rule does not include any mandates that would impose spending costs on State, local, or Tribal governments in the aggregate, or by the private sector, of $141 million.

XIII. Federalism Analysis

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have substantial direct effects on the rights, roles, and responsibilities of States, local or Tribal governments.

XIV. Congressional Review Act

This proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and has been transmitted to the Congress and the Comptroller General for review.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

XV. Files Available to the Public via the Internet

This section lists the Addenda referred to in the preamble of this proposed rule. Beginning in CY 2012, the Addenda for the annual ESRD PPS proposed and final rulemakings will no longer appear in the **Federal Register**. Instead, the Addenda will be available only through the Internet. We will continue to post the Addenda through the Internet.

Readers who experience any problems accessing the Addenda that are posted on the CMS Web site at *http://www.cms.gov/ESRDPayment/PAY/list.asp*, should contact Michelle Cruse at (410) 786–7540.

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); and sec. 124 of Pub. L. 106–113 (113 Stat. 1501A–332), sec. 3201 of Pub. L. 112–96 (126 Stat. 156), and sec. 632 of Pub. L. 112–240 (126 Stat. 2354).

§ 413.174 [Amended]

■ 2. Section 413.174 (f)(6) is amended by removing "January 1, 2014" and by adding in its place "January 1, 2016.

§ 413.237 [Amended]

■ 3. Section 413.237(a)(1)(iv) is amended by removing "excluding" and by adding in its place "including"; and by removing "January 1, 2014" and adding in its place "January 1, 2016".

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 4. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

■ 5. The heading for subpart C is revised to read as follows:

Subpart C—Fee Schedules for Parenteral and Enteral Nutrition (PEN) Nutrients, Equipment and Supplies, Splints, Casts, and Certain Intraocular Lenses (IOLs)

■ 6. Section 414.100 is revised to read as follows:

§ 414.100 Purpose.

This subpart implements fee schedules for PEN items and services, splints and casts, and IOLs inserted in a physician's office as authorized by section 1842(s) of the Act.

■ 7. Section 414.102 is amended by revising paragraphs (a) introductory text, (a)(2), (b)(1), and (c) to read as follows:

§ 414.102 General payment rules.

(a) *General rule.* For PEN items and services furnished on or after January 1, 2002, and for splints and casts and IOLs inserted in a physician's office on or after January 1, 2014, Medicare pays for the items and services as described in paragraph (b) of this section on the basis of 80 percent of the lesser of—

* * * * *

(2) The fee schedule amount for the item or service, as determined in accordance with §§ 414.104 thru 414.108.

(b) * * *

(1) CMS or the carrier determines fee schedules for parenteral and enteral nutrition (PEN) nutrients, equipment, and supplies, splints and casts, and IOLs inserted in a physician's office, as specified in §§ 414.104 thru 414.108.

* * * * *

(c) *Updating the fee schedule amounts.* For the years 2003 through 2010 for PEN items and services, the fee schedule amounts of the preceding year are updated by the percentage increase in the CPI–U for the 12-month period ending with June of the preceding year. For each year subsequent to 2010 for PEN items and services and for each year subsequent to 2014 for splints and casts, and IOLs inserted in a physician's office, the fee schedule amounts of the preceding year are updated by the percentage increase in the CPI–U for the 12-month period ending with June of

the preceding year, reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act.

■ 8. Section 414.106 is added to read as follows:

§ 414.106 Splints and casts.

(a) *Payment rules.* Payment is made in a lump sum for splints and casts.

(b) *Fee schedule amount.* The fee schedule amount for payment for an item or service furnished in 2014 is the reasonable charge amount for 2013, updated by the percentage increase in the CPI–U for the 12-month period ending with June of 2013.

■ 9. Section 414.108 is added to read as follows:

§ 414.108 IOLs inserted in a physician's office.

(a) *Payment rules.* Payment is made in a lump sum for IOLs inserted in a physician's office.

(b) *Fee schedule amount.* The fee schedule amount for payment for an IOL furnished in 2014 is the national average allowed charge for the IOL furnished from in calendar year 2012, updated by the percentage increase in the CPI–U for the 24-month period ending with June of 2013.

■ 10. Revise the heading to Subpart D to read as follows:

Subpart D—Payment for Durable Medical Equipment, Prosthetic and Orthotic Devices, and Surgical Dressings

* * * * *

■ 11. Section § 414.200 is revised to read as follows:

§ 414.200 Purpose.

This subpart implements sections 1834(a), (h) and (i) of the Act by specifying how payments are made for the purchase or rental of new and used durable medical equipment, prosthetic and orthotic devices, and surgical dressings for Medicare beneficiaries.

■ 12. Section 414.226 is amended by revising paragraph (c)(6) to read as follows:

§ 414.226 Oxygen and oxygen equipment.

* * * * *

(c) * * *

(6) Beginning in 2008, CMS makes an annual adjustment to the national limited monthly payment rate for items described in paragraph (c)(1)(i) of this section to ensure that such payment rates do not result in expenditures for any year that are more or less than the expenditures that would have been made if such classes had not been established.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 19, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 26, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–16107 Filed 7–1–13; 4:15 pm]

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Part III

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 740, 742, 770, et al.
Revisions to the Export Administration Regulations: Military Vehicles; Vessels of War; Submersible Vessels, Oceanographic Equipment; Related Items; and Auxiliary and Miscellaneous Items That the President Determines No Longer Warrant Control Under the United States Munitions List; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 770, 772 and 774

[Docket No. 110928603–3298–01]

RIN 0694–AF39

Revisions to the Export Administration Regulations: Military Vehicles; Vessels of War; Submersible Vessels, Oceanographic Equipment; Related Items; and Auxiliary and Miscellaneous Items That the President Determines No Longer Warrant Control Under the United States Munitions List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule adds to the Export Administration Regulations (EAR) controls on military vehicles and related items; vessels of war and related items; submersible vessels, oceanographic equipment and related items; and auxiliary and miscellaneous items that the President has determined no longer warrant control on the United States Munitions List (USML). This rule also adds to the EAR controls on items within the scope of the Munitions List (WAML) of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement) that are not specifically identified on the USML or the Commerce Control List (CCL) but that were subject to USML jurisdiction. Finally, this rule moves certain items that were already subject to the EAR to the new Export Control Classification Numbers (ECCNs) created by this rule. This rule is being published in conjunction with the publication of a Department of State, Directorate of Defense Trade Controls rule revising USML Categories VII, VI, XX, and XIII to control those articles the President has determined warrant control in those Categories of the USML. Both rules are part of the President's Export Control Reform Initiative. The revisions in this final rule are also part of Commerce's retrospective regulatory review plan under Executive Order (EO) 13563.

DATES: This rule is effective January 6, 2014.

ADDRESSES: Commerce's full plan can be accessed at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules.*

FOR FURTHER INFORMATION CONTACT: For questions regarding ground vehicles and related items controlled under ECCNs 0Y606, contact Gene Christiansen, Office of National Security and Technology Transfer Controls, at 202–482–2984 or *gene.christiansen@bis.doc.gov.*

For questions regarding surface vessels and related items controlled under ECCNs 8Y609 or submersible vessels and related items controlled under ECCNs 8Y620, contact Alexander Lopes, Office of Nonproliferation and Treaty Compliance, at 202–482–4875 or *alexander.lopes@bis.doc.gov.*

For questions regarding miscellaneous equipment, materials, and related items controlled under ECCNs 0Y617, contact Michael Rithmire, Office of National Security and Technology Transfer Controls, at 202–482–6105 or *michael.rithmire@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule is published by the Bureau of Industry and Security (BIS) as part of the Administration's Export Control Reform (ECR) Initiative. President Obama directed the Administration in August 2009 to conduct a broad-based review of the U.S. export control system to identify additional ways to enhance national security. In April 2010, then-Secretary of Defense Robert M. Gates, describing the initial results of that effort, explained that fundamental reform of the U.S. export control system is necessary to enhance our national security. The implementation of ECR includes amendment of the International Traffic in Arms Regulations (ITAR) and its U.S. Munitions List (USML), so that they control only those items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls, and amendment of the Export Administration Regulations (EAR) to control military items that do not warrant USML controls. This series of amendments to the ITAR and the EAR will reform the U.S. export control system to enhance our national security by: (i) Improving the interoperability of U.S. military forces with allied countries; (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services; and (iii) allowing export control officials to focus government resources on transactions that pose greater national security, foreign policy, or proliferation concerns than those involving our NATO allies and other multi-regime partners.

On July 15, 2011, as part of the ECR, BIS published a proposed rule (76 FR 41958) that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA), would no longer warrant control on the USML would be controlled on the EAR's Commerce Control List (CCL) (herein "the July 15 (framework) rule").

On April 16, 2013, BIS published a final rule setting forth the framework for adding to the CCL items that the President has determined no longer warrant control on the USML through the creation of "600 series" Export Control Classification Numbers (ECCNs) (78 FR 22660, April, 16, 2013 (herein the "April 16 (initial implementation) rule"). That structure is described at 78 FR 22662 and is not repeated here. This rule generally follows that structure in creating new "600 series" ECCNs to control certain military vehicles and related items; vessels of war and related items; submersible vessels, oceanographic equipment and related items; and auxiliary and miscellaneous items on the CCL. Pursuant to a rule published concurrently with this rule by the Department of State, the items are being removed from the USML because the President has determined they no longer warrant control on the USML.

The changes described in this rule and the State Department's rule amending Categories VI, VII, XIII, and XX of the USML are based on a review of those categories by the Defense Department, which worked with the Departments of State and Commerce in preparing the amendments. The review was focused on identifying the types of articles that are now controlled by the USML that either (i) are inherently military and otherwise warrant control on the USML, or (ii) if of a type common to civil applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States and that are almost exclusively available from the United States. If an article was found to satisfy either or both of those criteria, the article remains on the USML. If an article was found not to satisfy either criterion, but is nonetheless a type of article that is, as a result of differences in form and fit, "specially designed" for military applications, then it is identified in one of the new "600 series" ECCNs created by this rule.

Section 38(f) of the AECA (22 U.S.C. 2778(f)) obligates the President to review the USML "to determine what items, if any, no longer warrant export controls under" the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must "describe

the nature of any controls to be imposed on that item under any other provision of law." 22 U.S.C. 2778(f)(1). The Department of State made the congressional notification required by Section 38(f) of the AECA for removal of these items from the USML.

All references to the USML in this rule are to the list of defense articles that are controlled for purposes of export, temporary import, or brokering pursuant to the ITAR, and not to the list of defense articles on the United States Munitions Import List (USMIL) that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447. Pursuant to section 38(a)(1) of the AECA, all defense articles controlled for export or import, or that are subject to brokering controls, are part of the "USML" under the AECA. For the sake of clarity, references to the USMIL are to the list of defense articles controlled by ATF for purposes of permanent import. All defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of defense articles from the ITAR's USML to the EAR's CCL, for purposes of export controls, does not affect the list of defense articles controlled on the USMIL under the AECA for purposes of permanent import or brokering controls.

On January 18, 2011, President Barack Obama issued Executive Order (EO) 13563, affirming general principles of regulation and directing government agencies to conduct retrospective reviews of existing regulations. The revisions in this final rule are part of Commerce's retrospective regulatory review plan under EO 13563. Commerce's full plan, completed in August 2011, can be accessed at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules.*

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Proposed Rules

This rule implements amendments to the EAR proposed in the following four rules:

- *Revisions to the Export Administration Regulations (EAR): Control of Military Vehicles and Related Items That the President Determines No Longer Warrant Control on the United States Munitions List,* (76 FR 76085, December 6, 2011) (herein "the December 6 (vehicles) rule");
- *Revisions to the Export Administration Regulations (EAR): Control of Vessels of War and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML),* (76 FR 80282, December 23, 2011) (herein "the December 23 (vessels) rule");
- *Revisions to the Export Administration Regulations (EAR): Control of Submersible Vessels, Oceanographic Equipment and Related Articles That the President Determines No Longer Warrant Control Under the United States Munitions List (USML)* (76 FR 80291, December 23, 2011) (herein "the December 23 (submersible vessels) rule"); and
- *Revisions to the Export Administration Regulations: Auxiliary and Miscellaneous Items That No Longer Warrant Control Under the United States Munitions List and Items on the Wassenaar Arrangement Munitions List* (77 FR 29564, May 18, 2012) (herein "the May 18 (auxiliary equipment) rule").

This rule creates new "600 series" ECCNs to control certain military vehicles and related items; vessels of war and related items; submersible vessels, oceanographic equipment and related items; and auxiliary and miscellaneous items on the CCL. Descriptions of these ECCNs, issues raised in public comments on the rules proposing them, and BIS responses to those comments are addressed in discrete sections below. However, certain changes made by this rule apply more broadly: License Exception STA eligibility; notes on forgings and castings; the United Nations reason for control; removal of the .y.99 paragraph; separate definitions for "accessories" and "attachments;" and the composition of the entries for software and technology.

Broadly Applicable Changes Made by This Rule

Amendments to Section 740.20 (License Exception STA)

This final rule amends the License Exception STA provisions in § 740.20(b)(3)(iii) and (g)(1) of the EAR to indicate that the restrictions applicable to certain "600 series" ECCN "end items" also apply to "end items" controlled under ECCNs 0A606.a, 8A609.a, and 8A620.a or .b. These "600 series" ECCNs are being added to the CCL as part of this final rule. The April 16 (initial implementation) rule identified only those end items controlled by ECCN 9A610.a, because ECCNs 0A606, 8A609 and 8A620 would not be added to the CCL until publication of this rule.

Cross References to ECCN 0A919

This final rule adds to the "related controls" paragraph of Product Groups A, B, C, and D of the "600 series" ECCNs the following sentence: "(2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content." This is a non-substantive change from what was proposed.

Forgings and Castings

The December 6 (vehicles) rule included a note to ECCN 0A606.x, which stated that: "Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacture where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 0A606.x are controlled by ECCN 0A606.x." The December 23 (vessels) rule proposed such a note to ECCN 8A609.x, and the December 23 (submersible vessels) rule proposed such a note to ECCN 8A620.x.

This final rule adds the phrase "mechanical properties" to those notes because there may be circumstances when the mechanical properties, as well as the material composition, geometry or function, of a forging, casting, or unfinished product, may have been altered specifically for a 0A606.x, 8A609.x, or 8A620.x part or component. The omission of "mechanical properties" from the lists in the proposed rules was an error that is being corrected in this rule.

United Nations (UN) Reason for Control

The July 15 (framework) rule proposed applying a United Nations (UN) reason for control to military vehicles and related items. The December 6 (vehicles) rule proposed removing the UN reason for control that had been proposed by the July 15 (framework) rule. None of the other "600 series" ECCNs created by this rule contained items that would have been subject to a UN reason for control when

they were proposed. Consistent with the April 16 (initial implementation) rule, this final rule includes the UN controls described in § 746.1(b) of the EAR in the ECCNs that it creates. These controls are consistent with the amendments contained in a final rule that BIS published on July 23, 2012 (77 FR 42973), titled "Export and Reexport Controls to Rwanda and United Nations Sanctions under the Export Administration Regulations." That rule amended § 746.1 of the EAR to describe the licensing policy that applies to countries subject to a United Nations Security Council (UNSC) arms embargo and to limit the use of license exceptions to such countries. Applying that licensing policy and related license exception restrictions to the new "600 series" ECCNs that are created by this final rule is appropriate because of the military nature of the items controlled under these new ECCNs.

Paragraph .y.99

The proposed rules would have created a paragraph .y.99 in each of the new "600 series" ECCNs. Those paragraphs would have imposed the antiterrorism (AT Column 1) reason for control to items that would otherwise be controlled in that ECCN but that had been determined to be subject to the EAR in a commodity jurisdiction determination issued by the Department of State and that are not elsewhere identified on the CCL (*i.e.*, were designated as EAR99). Applying the AT Column 1 reason for control would increase the number of circumstances under which these items would require a license. As stated in the preamble to the April 16 (initial implementation) rule (*See* 78 FR 2266, April 16, 2013), BIS agreed with a commenter that the burden of tracking down and analyzing whether items formally determined not to be subject to the ITAR that were also EAR99 items because they were not identified on the CCL outweighs the once-contemplated organizational benefits of creating the .y.99 control. Such items have already gone through an interagency review process that concluded whether the items were subject to the ITAR. Thus, BIS has determined that any such items should retain EAR99 status if not otherwise identified on the CCL. Accordingly, this final rule does not contain any .y.99 paragraphs.

Accessories and Attachments

The proposed rules would have enclosed the phrase "accessories and attachments" in quotation marks through its regulatory text, in keeping with the July 15 (framework) rule, which proposed a single definition for that phrase. Subsequently, BIS published a proposed rule entitled "'Specially Designed' Definition" (77 FR 36409, June 19, 2012), which proposed, *inter alia*, creating separate, but identical definitions for "accessories" and for "attachments" to allow for instances when only one of the terms would be used. The April 16 (initial implementation) rule adopted that change as a final rule. Accordingly, this final rule identifies "accessories" and "attachments" as separate terms wherever they appear in the regulatory text.

Conforming Change Regarding Gas Turbine Engines

In the April 16 (initial implementation) rule, BIS created, *inter alia*, ECCN 9A619 military gas turbine engines and related commodities (*See* 78 FR 22731, April 16, 2013). ECCN 9A619, as it appeared in that rule, applied to gas turbine engines that are not enumerated on the USML, but are "specially designed" for "end-items" in USML Category VIII or ECCN 9A610, both of which apply to aircraft. Consistent with the proposed changes in the December 6 (gas turbine engine) rule, this rule expands the scope of ECCN 9A619 to apply to gas turbine engines that are not on the USML, but are for military vehicles (USML Category VII and ECCN 0A606) and surface vessels (USML Category VI and ECCN 8A609). The President has determined these items no longer warrant control on the USML.

Consistency of Controls

This final rule diverges in certain instances from the four proposed rules on which it was based with respect to the composition of the ECCNs. Software and technology ECCNs related to end items, production or other equipment, or materials generally control software and technology for the development and production of those items, and for some combination of the following six elements: operation, installation, maintenance, repair, overhaul, or refurbishing of those items. Separate technical teams determined the scope of control for different groups of ECCNs. As a result, different software and technology entries varied in the number and type of functions controlled.

Although this variation was not inappropriate technically and did not receive public comments when proposed in four separate rules, BIS is concerned that retaining this variation would complicate compliance. Standard text across ECCNs is a simpler approach. Therefore, each software ECCN in this final rule will control software for development, production, operation, or maintenance of the relevant items. Each new "600 series" technology ECCN in this final rule will control technology for development, production, operation, installation, maintenance, repair, overhaul, or refurbishing of those items. To the extent that a particular function does not apply to a particular item because no software or technology to perform the function with respect to that item exists, no burden is imposed. Controlling a larger number of functions in technology ECCNs is not an increase in burden because all six functions are now controlled for technology on the USML.

Similarly, all production equipment ECCNs will control test, inspection, and production equipment for the development, production, repair, overhaul, or refurbishing of the relevant items.

Military Vehicles and Related Items

Background

The controls on military vehicles and related items in this final rule are based on the proposals for controlling those items set forth in the July 15 (framework) rule and refined in the December 6 (vehicles) rule and on a review of the public comments thereon by the Departments of Defense, State and Commerce.

This rule generally follows the structure established in the April 16 (initial implementation) rule in creating five new "600 series" ECCNs to control military ground vehicles and related items. However, this rule departs from that structure in ECCN 0A606.b. That paragraph retains national security (NS Column 2) and regional stability (RS Column 2) controls on the unarmed armored vehicles that upon the effective date of this rule will be controlled under ECCN 0A606.b instead of ECCN 9A018.b. Otherwise, this rule applies the national security (NS Column 1) and regional stability (RS Column 1) reasons for control that apply generally to "600 series" items that are subject to the national security and regional stability reasons for control. The December 6 (vehicles) rule proposed these reasons for control, and BIS received no comments on that aspect of the December 6 (vehicles) proposed rule. As a conforming change, this rule revises the RS column 2 license requirement paragraph in § 742.6(a)(4)(i) to reference the column rather than to list specific ECCNs, as was done for the RS column 1 license requirement paragraph in the April 16 (initial implementation) rule.

The change to § 742.6(a)(4)(i) is in format only; it does not alter the license requirements for any item that is subject to the RS Column 2 reason for control.

Changes to Controls on Military Vehicles and Related Items Made by This Rule

This rule implements the proposals of the July 15 (framework) rule and the December 6 (vehicles) rule by creating five new ECCNs. New ECCN 0A606 applies to military ground vehicles, parts, components, accessories and attachments. New ECCN 0B606 applies to related test, inspection and production equipment and parts and components. New ECCN 0C606 applies to related materials. New ECCN 0D606 applies to related software. New ECCN 0E606 applies to related technology.

This rule revises ECCN 9A018 only to cross reference ECCNs 9A610 (aircraft), 9A619 (gas turbine engines) and 0A606 (vehicles) because upon the effective date of this rule, all the commodities previously in ECCN 9A018 will have been moved to one of those other three ECCNs. This rule also revises ECCN 9D018 to contain only cross references to ECCNs 9D610 and 9D619 and to EAR99 and revises ECCN 9E610 to contain only cross references to 9E610, 9E619 and EAR99 because upon the effective date of this rule, all of the software and technology will have been moved to one of those ECCNs or will be EAR99.

This rule also removes "Interpretation 8" from § 770.2 of the EAR (15 CFR 770.2(h)). That interpretation, which explains the relationship between EAR and the ITAR with respect to ground vehicles, is no longer necessary because that relationship is expressly delineated in ECCN 0A606 (as published by this rule) and in USML Category VII in a Department of State rule that is being published simultaneously with the rule.

Changes Compared to the Proposed December 6 (Vehicles) Rule

The December 6 (vehicles) rule proposed including in ECCN 0A606.b certain all-wheel drive vehicles with armor that meet National Institute of Justice Level III standards. Such vehicles currently are controlled in ECCN 9A018.b and listed in the Wassenaar Arrangement Munitions List (WAML) category ML6. To reflect changes agreed to at the Wassenaar 2012 plenary meeting and subsequently implemented in ECCN 9A018.b, this rule makes three substantive changes to the descriptions of those vehicles in ECCN 0A606.b compared to the text of ECCN 0A606.b in the December 6 (vehicles) rule. One change broadens the coverage of paragraph .b to apply to vehicles with transmissions that supply drive to the front and rear wheels simultaneously even if the vehicle has other wheels that may or may not provide driving force. The proposed wording was "all-wheel drive." The second change limits the scope of the paragraph to vehicles with a gross vehicle weight rating greater than 4,500 kilograms. The third change replaces the term "capable of off road use" with the term "designed or modified for off road use." In this final rule, ECCN 0A606.b also adopts the WAML category ML6 format in describing these vehicles, a non-substantive change from the December 6 (vehicles) rule.

This final rule also includes an illustrative list of characteristics that make a vehicle designed for military use in Note 2 to paragraph .a in ECCN 0A606. This note is based on note 2 to the WAML category ML6. Prior to the effective date of this rule the contents of the note were in an interpretation found in § 770.2(h) of the EAR. Because this rule removes § 770.2(h) from the EAR, inclusion of the note in ECCN 0A606 is appropriate.

Following the pattern of many of the ECCNs that control commodities, ECCN 0A606 contains a paragraph .x, which applies to unspecified parts, components, accessories and attachments that are specially designed for a specified set of end items, and a paragraph .y, which applies to specified parts, components, accessories and attachments that are "specially designed" for items described in that ECCN or the corresponding USML Category. To lessen the chances that readers will mistakenly classify items specified in paragraph .y under paragraph .x, which requires a license to more destinations than does paragraph .y, this final rule adds wording to paragraph .x specifically excluding items specified under paragraph .y. This is not a substantive change to what was proposed.

ECCN 0A606.y identifies specific "parts," "components," "accessories" and "attachments" that are "specially designed" for commodities enumerated in 0A606 (other than paragraph .b) or for defense articles enumerated in USML Category VII and are not elsewhere specified on the USML or CCL. Among the parts so identified in the December 6 (vehicles) rule (0A606.y.1), were "brake system components," which were then further described by an illustrative list reading "*e.g.,* discs, rotors, shoes, drums, springs, cylinders, lines, and hoses." Subsequent events have made it necessary for BIS to revise paragraph .y.1 from what was proposed. First, the April 16 (initial implementation) rule adopted a definition of specially designed that expressly excludes "springs" from that term, effectively treating all springs as not being specially designed parts, components, accessories or attachments for purposes of 0A606.x and .y. That rule also adopted separate definitions of the terms "parts" and "components." Some of the examples in the illustrative list, such as discs and drums, would be defined as parts rather than components. Finally, upon review of the public comment that proposed adding electronic braking systems to paragraph .y.1 (discussed below), BIS concluded that paragraph .y.1 needed additional precision. Therefore, this final rule makes paragraph .y.1 an exclusive list that reads: "Brake discs, rotors, drums, calipers, cylinders, pads, shoes, lines, hoses, vacuum boosters, and parts therefor." The term "parts therefor" means parts of any of the ten individual articles enumerated in paragraph .y.1.

ECCN 0C606 applies to materials "specially designed" for military vehicles, "parts," "components," "accessories" or "attachments" controlled by ECCN 0A606. The December 6 (vehicles) rule included wording in the header and in "Note 1" in ECCN 0C606 that would have limited the scope of materials controlled by ECCN 0C606 to materials not controlled by other ECCNs. The effect of that wording would have been to make materials that are specifically mentioned in a non-"600 series" ECCN controlled by that non-"600 series" ECCN even if they are "specially designed" for a military vehicle, "part," "component," "accessory" or "attachment" that is controlled by ECCN 0A606. In a rule published June 19, 2012 (77 FR 36409) ("the June 19 (specially designed) rule"), BIS proposed guidance for reviewing the CCL to determine an item's classification. The April 16 (initial implementation) final rule adopted an order of review for the CCL that gives "600 series" ECCNs precedence over non-"600 series" ECCNs (*See* 78 FR 22735, April 16, 2013). The header and note proposed for 0C606 in the December 6 (vehicles) rule would contravene that order of precedence. Accordingly, this final rule revises the header of ECCN 0C606 to remove the reference to "not elsewhere specified . . . on the CCL," removes proposed "Note 1" and redesignates "Note 2" as "Note." This rule replaces the phrase "N/A" that appeared in the "Units" paragraph in the December 6 (vehicles) rule with the phrase "$ value," which

more accurately describes the unit in which materials would be licensed.

The December 6 (vehicles) rule included notes in the "related controls" sections of ECCNs 0A606, 0B606, 0C606, 0D606 and 0E606 referring readers to ECCN 0A919 for controls on "military commodities" containing more than 10 percent U.S.-origin "600 series" items. That text was consistent with the *de minimis* thresholds for "600 series" items proposed in the July 15 (framework) rule. Since publication of the December 6 (vehicles) rule, the June 21 (transition) rule proposed having no *de minimis* level for 600 series items destined for a U.S. arms embargoed country (*See* 77 FR 37532, June 21, 2012). The April 16 (initial implementation) rule adopted this standard as a final rule (*See* 78 FR 22667 and 22707, April 16, 2013). In addition, that rule created a new Country Group D:5 in Supplement No. 1 to part 740 to list the U.S. arms embargoed countries (*See* 78 FR 22675 and 22721, April 16, 2013). Thus, the *de minimis* level for U.S.-origin "600 series" items could be either 0% or 25% depending on the destination. Accordingly, in this final rule, the "related controls" sections in each of those ECCNs, except 0E606, referring readers to ECCN 0A919 use the phrase "more than a *de minimis* amount of U.S.-origin 600 series controlled content." The reference is not included in 0E606 because the EAR do not provide for the incorporation of technology into a commodity under the *de minimis* rule.

Comments on the December 6 (Vehicles) Rule Addressed by This Rule

BIS received comments on the December 6 (vehicles) rule from one organization and one individual. Additionally, in the preamble to the December 6 (vehicles) rule, BIS stated that it would continue to consider certain comments made in response to the July 15 (framework) rule with respect to military vehicles.

The organization that commented noted that in the preamble to the December 6 (vehicles) rule, BIS addressed comments made by that commenter and others concerning which vehicle parts should be subject to no more than the antiterrorism reason for control. In that preamble, BIS noted that it was continuing to review this issue and welcomed further comments. The organization addressed five general topics, all of which relate to whether certain parts and components should be included in "600 series" ECCNs generally and 0A606 in particular. The discussion below summarizes the points made under each of those topics separately and also addresses comments related to military vehicles that BIS received in response to the July 15 (framework) rule and that it stated in the December 6 (vehicles) rule it would further consider. This discussion provides a single response to topics 1, 2 and 3.

Comments Related to Exclusion of Certain Items From the 600 Series or to Limiting Them to the .y Paragraphs

Topic 1. List of Parts and Components with Little or No Military Significance

This commenter proposed that gauges such as speedometers; instrument panels/clusters; vehicle/engine sensors; vehicle engine monitoring sensors and displays such as check engine lights and their associated sensors; electronic braking systems; multiplexing systems to limit vehicle wiring; tire pressure monitoring systems and data relating to tires (not including run-flats) be added to the list of .y items. The commenter reiterated its opinion expressed in its comments to the July 15 (framework) rule that these items have little or no military significance. The commenter also attributed to BIS the statement that these might have to be modified for a particular military vehicle; such modifications typically relate to fit and are similar to the types of modifications that are made for civilian vehicles. BIS's statement to this effect was part of its summary of a comment received in response to the July 15 (framework) rule. The commenter noted that BIS appeared to have adopted two "additional factors" for determining whether a part was militarily significant. Those factors were (1) concealment and (2) water proof/resistant status and stated that those two factors were not a reason to treat the above items as militarily significant. This conclusion on the part of the commenter appears to be based on a statement in the preamble to the December 6 (vehicles) rule that BIS made in response to a comment to the effect that exhaust systems should not be treated as militarily significant because they perform the same function on both civil and military vehicles. BIS's response noted that the exhaust systems on some military vehicles have features that reduce infrared signature to make the vehicle less detectable and features to enable deep water fording and therefore, could not be considered as *per se* lacking military significance.

In response to comments on the July 15 (framework) rule, BIS stated that it was still considering comments related to exhaust systems, wheels and blackout lights and 0A606.y. One such comment stated that exhaust pipes consist mainly of metal tubing that is bent to fit a particular model of vehicle. As such, they appear to be classified under 0A606.x. The commenter stated that exhaust pipes serve the function of keeping poisonous gases away from the passenger compartment on both civilian and military vehicles. A second comment recommended that wheels be added to 0A606.y, stating that wheels have no more military significance than bearings, axles and blackout lights, all of which were in 0A606.y of the proposed rule. A third comment questioned why blackout lights were included in proposed ECCN 0A606.y (in the July 15 (framework) rule). The commenter noted that the .y paragraph was intended to apply to items of little or no military significance. However, the commenter noted that blackout lights also were included in proposed interpretation h, which, among other things, identifies features that give a military vehicle its military characteristics.

Topic 2. Criteria for Determining Military Significance

This commenter noted that the December 6 (vehicles) rule solicited additional comment on appropriate criteria for determining which items classified under "600 series" ECCNs should be limited to the AT reason for control. The organization stated that the December 6 (vehicles) rule listed five criteria. Actually, those five criteria were suggested in a comment to the July 15 (framework) rule. BIS noted them in the preamble to the December 6 (vehicles) rule and neither adopted nor rejected them, but encouraged further comment on appropriate criteria for determining which items classified under "600 series" ECCNs should be limited to the AT reason for control.

Topic 3. Process to Add to List of Items Lacking Military Significance

This commenter stated that the EAR, both currently and as proposed, lacks a process, short of amending the regulations, to designate an item as subject only to the .y paragraph controls because it lacks military significance. In addition, the commenter stated, self-classification will be impossible because of the "catch-all" character of the proposed .x paragraphs. Without a specific process to add more products to the .y paragraphs, the commenter suggested that export reform might cause more problems than it is intended to resolve. Although implementing such a process would likely require agency resources, the commenter suggested that

reduced license application volume would result in a countervailing reduction in the need for agency resources. Exports of parts without military significance would be expedited by fewer license requirements.

This commenter also proposed that a more efficient alternative to adopting a process for adding items to the .y paragraphs would be to adopt a definition for "specially designed" that would eliminate the need to list militarily insignificant parts at all. This commenter suggested that as an alternative, the government could create a positive list of parts that are militarily significant and substantially deregulate all other parts. In the commenter's view, either alternative would give the U.S. military better access at lower prices to commercial technologies that could update its fleet and better equip U.S. military personnel.

Response to topics 1, 2 and 3: Upon further review and reflection, BIS has concluded that it should not change the list of parts, components, accessories and attachments that were proposed for ECCN 0A606.y in the December 6 (vehicles) rule (except for the changes to 0A606.y discussed above). BIS has also concluded that it would not be possible to publish objective criteria by which additional parts, components, accessories and attachments would be designated as having such limited military significance that they should be controlled in the .y paragraph of ECCN 0A606 and establish a routine process for seeking such designation.

Subsequent to the closing of the comment period on the December 6 (vehicles) rule, BIS published the April 16 (initial implementation) rule, which adopted a new definition of "specially designed." As described in more detail in that rule (*see* 78 FR 22728), parts and components that are used in or with USML Category VII or 0A610 vehicles and other commodities are not caught as specially designed items in 0A606.x or 0A606.y if any of the exclusions in the definition's paragraph (b) apply. Thus, for example, as described in paragraph (b)(1), if the Commerce Department issues a classification determination that the Departments of Commerce, State, and Defense have agreed that a part or component used in or with a military vehicle does not warrant being considered "specially designed," then it will not be controlled by 0A606.x or 0A606.y. If the part is one of the basic parts listed in paragraph (b)(2), then it is not controlled by 0A606.x or 0A606.y. If, as described in detail in paragraph (b)(3), a part or component not elsewhere enumerated on the USML or the CCL is common to a military vehicle and an EAR99 civil vehicle in production, then it is not controlled by 0A606.x or 0A606.y. If, as described in detail in paragraphs (b)(4), (b)(5) and (b)(6), a part or component is not elsewhere enumerated on the USML or the CCL and there is sufficient contemporaneous evidence that it was developed for vehicles not on the USML or CCL (or on the CCL for only AT reasons) for such vehicles and for vehicles that are on the USML or other entries on the CCL, or was developed as a general purpose commodity or software, *i.e.*, with no knowledge that for use in or with a particular commodity, then it will not be within the scope of 0A606.x or 0A606.y.

After review of the comments, BIS has concluded that technological significance to the military character of the vehicle should not determine whether a particular part, component, accessory or attachment is included in paragraph .x (requiring a license to all destinations other than Canada), .y (requiring a license to a limited range of destinations), or even EAR99 (not listed on the CCL at all). BIS has reached this conclusion in recognition of national security and foreign policy justifications for the U.S. Government's having control over the export and reexport of parts, components, accessories and attachments that, even if they perform functions that are common to both civil and military vehicles, are nonetheless in some way unique to or specially designed for military vehicles. Imposing export license requirements on such parts, accessories and attachments gives the U.S. Government visibility into whether persons in certain countries have such military vehicles or need such vehicles repaired. As circumstances change, these controls give the U.S. Government the ability to control the flow of such parts and components as national security and foreign policy concerns warrant. The U.S. Government has, however, decided that controlling such items on the ITAR is too restrictive and has, thus, created the more flexible controls in the "600 series" for such items.

BIS notes that there are no items within the scope of 0A606.x or 0A606.y that were not, prior to the effective date of this rule, subject to the ITAR and controlled under USML Category VII(g), which controlled parts, components, accessories, and attachments specifically designed or modified for the military vehicle and other items described in USML Category VII. Although classification under a "600 series" ECCN might impose sufficient additional regulatory burden that a manufacturer of EAR99 items might not wish to modify the design of its products to adapt them to military vehicles, nonetheless, the movement of these items to a "600 series" ECCN represents a substantial reduction in the licensing burden for manufacturers whose products currently are subject to the ITAR.

BIS does not agree with the commenter's statement that the catch-all nature of the .x paragraphs would make self-classifications "impossible." If a part or component is listed on the USML, then it is ITAR controlled. If not, and it is enumerated in an ECCN 0A606 paragraph, then it is subject to the EAR and controlled in that paragraph. If not, and it was "specially designed" for a USML VII article or a 0A606 (other than 0A606.b) item, then it is controlled under 0A606.x, unless specifically identified in 0A606.y. Such items, when they were ITAR controlled under USML Category VII(g), required a license from State to export worldwide (except Canada if eligible under the Canadian exemption) and had a zero percent *de minimis* threshold when incorporated into civilian or military items. The U.S. Government has considerably adjusted the controls on such items by controlling them in the new 0A606.x, which has available to it several license exceptions and, for most of the world, a 25% *de minimis* threshold. In addition, BIS disagrees with the commenter's request that the catch-all provisions be amended so that they only control "significant" parts and components. The commenter would leave solely up to the exporter the subjective determination whether something is "significant." It is certain that not all exporters and government officials would come to the same conclusion regarding the significance of any particular item. Granting the requested edit would thus not create the reliability and predictability BIS is trying to accomplish with the proposed revisions and the new definition of "specially designed." It is the government that decides whether a part or component is so significant, from either a national security or a foreign policy perspective, as to warrant control on the USML or the more flexible controls of the "600 series" ECCNs, not the exporter.

BIS also notes that although the July 15 (framework) rule included blackout lights in ECCN 0A606.y, the December 6 (vehicles) rule did not do so. In the preamble to the December 6 (vehicles) rule, BIS stated that it did not include blackout lights because blackout lights were then the subject of discussions at the Wassenaar Arrangement and that

changing controls on them at that time would be premature. Since the publication of the December 6 (vehicles) rule, two plenary meetings of the Wassenaar Arrangement have taken place. At neither plenary meeting did the Wassenaar Arrangement decide to remove blackout lights from the list of modifications that make a vehicle one for military use as found in Note 2 to WAML category ML6. For this reason, in addition to those in the immediately preceding paragraph, this final rule does not include blackout lights in 0A606.y. Thus, blackout lights that are "specially designed" parts for vehicles in USML Category VII or in ECCN 0A606.a are included in ECCN 0A606.x.

Topic 4. Information Needed To Adapt Militarily Insignificant Parts and Components for Military Vehicles

One commenter noted that the December 6 (vehicles) rule stated that BIS is considering recommendations to "limit the controls on form, fit and function data needed to provide militarily insignificant items for military vehicles to the antiterrorism reason [for control]" and reiterated with some elaboration the comments it made on this issue in response to the July 15 (framework) rule. The commenter stated that such a limit is critical to effective export control reform. Parts suppliers need to know basic information about size, shape, available electrical current and voltage, and other basic parameters in order to adapt a part to a particular vehicle. They need to communicate this information to their employees and suppliers. Requiring parts manufacturers to obtain licenses in order to do so would increase the cost and complexity of compliance programs, negating much of the advantage of creating 0A606.y items.

Response: BIS did not adopt this recommendation. Although BIS desires to avoid imposing excessive compliance costs on parties engaged in transactions that are subject to the EAR, some such costs cannot be avoided. In many cases, BIS maintains export license requirements on development and production technology for those parts and components that are comparable to the license requirements imposed on the parts and components themselves because doing so provides a source of information about the disposition and status of military vehicles. BIS also disagrees with the commenter that adding parts and components to the .y controls increases compliance burdens. All parts and components that are now controlled in 0A606.y were, prior to the effective date of this rule, subject to the ITAR under USML Category VII(g). There are significantly fewer licensing and compliance burdens for an AT-only EAR item than for an ITAR-controlled item.

Topic 5. Analog v. Digital Parts and Components

One commenter noted that the proposed December 23 (vessels) and December 23 (submersible vessels) rules distinguished between digital and analog parts in compiling lists of parts of little military significance. However, the commenter addressed its comment on this issue to those two rules and to the December 6 (vehicles) rule. This commenter described that distinction as arbitrary and unwarranted. This commenter noted that digital automobile parts have been in use for dozens of years and are in almost all modern civil vehicles and vessels. The commenter noted that the main reasons for using digital components are: Reduced signal degradation, interoperability with other vehicle parts and ability to track and display diagnostic, service and repair codes. This commenter asserted that there is nothing inherently military about these functions. This commenter also noted that some parts designed for a specific military function are analog.

Response: With respect to military vehicles, the July 15 (framework) rule, the December 6 (vehicles) rule and this final rule do not draw a distinction between analog and digital components in designating items for the .y paragraph of ECCN 0A606.

Comments Related Primarily to Definitions or Terminology

Comment: One commenter recommended that the term "military use" and similar terms such as "military application," "military mission" or "defense articles" be avoided because they are ambiguous and that more specific terms be substituted instead.

Response: BIS certainly desires to make the EAR as explicit and precise as it can. However, in some instances, terms such as the commenter proposes avoiding cannot be avoided. For some things, a military application is an important distinguishing factor. In some instances, such terms are needed to fully describe the items to which the EAR applies. Sometimes, such terms are needed to conform with multilateral control lists which continue to use phrases such as "military application." The CCL will be amended over time to reflect changes in the multilateral control lists.

Comment: One commenter recommended that the term "specially designed" be replaced with "required" and that the definition of "required" currently in the EAR be expanded to apply to commodities as well as software and technology. This definition focuses on the portion of the technology that is peculiarly responsible for achieving or exceeding the controlled performance levels. This commenter opined that "required" would be more precise than "specially designed." He also stated that the term "specially designed" is generally associated with designer intent.

This commenter recommended that only components that meet the definition of "required" be controlled under "600 series" ECCNs. To address situations in which an end item that is on the USML could be manufactured from parts, none of which meets the definition of "required," this commenter recommended adding a new end-use control to part 744 of the EAR that would control technology required for assembly of components into USML end items even if the components are not specified on the CCL.

As a specific instance of this recommendation, this commenter recommended changing "specially designed" to "required" in 0A606.x, 0B606 heading, .a, and .b; 0D606 and 0E606 headings.

Response: BIS did not adopt these recommendations. The term "required" is defined in the EAR and is not coextensive with the term "specially designed." Limiting controls on parts and components to only those that would be "peculiarly responsible" for the military functionality of a particular item would be a significant decontrol contrary to the national security and foreign policy bases for the controls and the reform initiative. Most parts and components that are specially designed for military vehicles do not provide any military functionality to the item other than to enable it to operate.

In the April 16 (initial implementation) rule, BIS adopted a definition of "specially designed" that is the product of two rounds of proposed rules and review of extensive public comments. This definition applies two tests for inclusion within the definition of "specially designed" and then provides six exclusions whereby a part, component, accessory, attachment or software may be released from the definition. (*See* 78 FR 22728, April 16, 2013) The first test, which is similar to the definition of "required," addresses items that have, as a result of "development," "properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph

. . . " The second test in the definition covers parts, components, accessories, attachments or software that are for use in or with defense articles on the USML or items on the CCL. When paired with the exclusions, this second test provides a basis for including within ECCNs 0A606, 0B606, and 0D606 parts, components, accessories, attachments and software that are sufficiently military in their character to merit inclusion in a "600 series" ECCN while excluding those that are common to both military and unlisted civil items in production. Inclusion of military parts, components, accessories, attachments and software in these ECCNs provides the U.S. Government with useful information about the disposition and operating status of vehicles that previously have been licensed for export.

The comment also implicitly assumes that the only parts and components that warrant controls are those that provide peculiar military functionality to a controlled item. The basis for the government's controls on unspecified parts and components is that those items that are deliberately designed or modified and are not otherwise in normal commercial use—i.e., that are "specially designed" for a military end item—warrant control for that reason. The U.S. government has national security and foreign policy interests in being able to monitor, control, and otherwise have visibility into the supply chain of the parts and components that are necessary to keep military items functioning. The U.S. Government has made a determination that such parts and components, which are now ITAR controlled, do not warrant all the controls of the ITAR. The Government has not made, and does not intend to make, a determination that such items do not warrant control at all.

Comment: One commenter recommended that ECCNs 0D606 and 0E606 (along with related provisions of the ITAR) as proposed in the December 6 (vehicles) rule and the State Department's corresponding rule be revised to place control over production software and technology with Commerce because production equipment is controlled by Commerce. This commenter also stated that the definitions of "development" and "production" overlap. The commenter proposed remedying these situations by revising 0D606 and 0E606 to apply to software and technology required for the development or production of military vehicles and related items on the ITAR and to apply to software and technology for the development, production, operation, installation, maintenance, repair, overhaul or refurbishing of military vehicles and related items on the CCL.

Response: BIS did not adopt this recommendation. The commenter is correct in noting that ECCN 0D606 in the December 6 (vehicles) rule and in this final rule applies *inter alia* to software for the production of commodities in ECCN 0A606 and that the term "production" is defined in the EAR to include inspection and testing. However, the equipment that is used to produce those commodities and articles is not necessarily of the same sensitivity as the software and technology that is specific to the production of the commodities and articles. Some equipment may be used to produce multiple types of items of varying sensitivity. The decision to place a particular software or technology on the USML or on the CCL should be based on the capabilities of that software or technology.

BIS does not agree with the commenter's assertion that the definitions of "development" and "production" overlap. Those definitions, which are the definitions used by the Wassenaar Arrangement, have been in the EAR for years, and BIS is unaware of any confusion caused by alleged overlap of the terms.

Comment: One commenter recommended that proposed ECCN 0A606, paragraph a., be modified to incorporate, into the body of that paragraph, proposed text in a note immediately following that paragraph and by revising that text to make the following three changes:

1. Add language to the description of the tanks subject to that paragraph to allow certain modifications of tanks built prior to 1956. Those modifications are safety features required by law, cosmetic modifications and addition of parts and components available prior to 1956;

2. Replace with word "military" with the word "armored" in describing the trains subject to paragraph .a; and

3. Remove all references to trailers.

Response: This final rule adopts the portions of this commenter's recommendation relating to modifications of certain tanks built prior to 1956 that do not change the tank's status as a tank built in 1955 or earlier. The wording concerning such modifications appeared in the Department of State proposed rule on Category VII in proposed language in 22 CFR 121.4(b) describing ground vehicles that are subject to the EAR (See 76 FR 76100, 76102, December 6, 2011). Including matching language in the EAR will make the boundary between the EAR and the ITAR more explicit with respect to military vehicles. Accordingly this rule adds, in response to the commenter's recommendation, at the end of Note 1 to paragraph .a of ECCN 0A606, the sentence "For purposes of this note, the term "modified" does not include incorporation of safety features required by law, cosmetic changes (e.g., different paint or repositioning of bolt holes) or addition of "parts" or "components" available prior to 1956."

BIS did not adopt the proposal to incorporate the text of the note into the body of paragraph .a because BIS does not believe that doing so would add clarity to the rule. BIS did not replace the word "military" with the word "armored" because currently, USML Category VII(a) applies to, *inter alia,* "military railway trains" and does not require that such trains be armored. BIS's intent is to include in ECCN 0A606 the trains currently covered by Category VII(a) unless those trains are armed or are specially designed for launching missiles. BIS did not remove references to trailers because trailers are included in WAML category ML6. Failure to include them would be inconsistent with the U.S. Government's commitments to the Wassenaar Arrangement.

Comment: This commenter also recommended deleting the term "specially designed" from 0A606.b.1, Note 2 because in the commenter's opinion, "none of the definitions under consideration for specially designed make sense when applied to a decontrol."

Response: BIS is not deleting the term "specially designed" from this note, which is taken from the WAML category ML6 and reads: "ECCN 0A606.b.1 does not control civilian vehicles 'specially designed' for transporting money or valuables." Although the commenter's position is arguably correct when applied to the proposed definition of "specially designed" in the July 15 (framework) rule, the definition of "specially designed" adopted in the April 16 (initial implementation) rule does make sense in provisions such as this note. That definition of "specially designed" applies to an item that "(1) As a result of "development" has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph; or (2) Is a "part," "component," "accessory," "attachment," or "software" for use in or with a commodity or defense article 'enumerated' or otherwise described on the CCL or the USML."

When the first definition criterion is substituted for the defined term, ECCN 0A606.b.1, Note 2 reads: "ECCN 0A606.b.1 does not control civilian vehicles '[that][a]s a result of "development" . . . [have] properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph for transporting money or valuables." Furthermore, the second criterion does not apply because vehicles for transporting money or valuables are not parts, components, accessories, attachments or software. The phrase transporting money or valuables is a parameter that appears on the decontrol note and not in the ECCN 0A606.b.1 control text. Thus, Note 2 limits the scope of ECCN 0A606.b.1. BIS believes use of the term "specially designed" here will not cause confusion.

Comment: One commenter also recommended deleting the word "special" from the phrase "special reinforcements for mounts for weapons" in 0A606.b.1 Note 3.

Response: BIS did not accept this recommendation. ECCN 0A606.b.1 applies to, *inter alia*, certain unarmed vehicles with armor. Note 3 defines an unarmed vehicle for purposes of paragraph .b.1. The adjective "special" in this instance makes clear that ordinary bracing or reinforcing used in the bodies of civil vehicles does not make a make a civil vehicle armed. Additionally, BIS notes the similarity between the language in Note 3—"special reinforcements for mounts for weapons" and the example, set forth in WAML category ML6, of a modification that makes a vehicle "specially designed" for military use—"Special reinforcements or mountings for weapons. . . ."

Comment: One commenter also recommended deleting the term "specially designed" in the phrase that appears in 0A606.e and reads "deep water fording kits specially designed for ground vehicles controlled by 0A606.a or USML Category VII."

Response: BIS did not adopt this recommendation. BIS believes that the term "specially designed" is necessary to provide precision to the scope of paragraph .e.

Comment: One commenter recommended making 0A606.x, which applies to "specially designed" parts, components, accessories and attachments, inapplicable to 0A606.c (air-cooled diesel engines and engine blocks for armored vehicles of 40 tons or more), .d (continuously variable automatic transmission for tracked combat vehicles), .e (deep water fording kits for vehicles in USML Category VII or ECCN 0A606), and .f (self-launching bridge components not enumerated in USML Category VII(g) for deployment by vehicles in USML Category VII or 0A606). This commenter also asserted that imposing a license requirement on components of components was problematic but did not provide reason for the assertion.

Response: BIS did not adopt this recommendation, which would have the effect of eliminating the license requirement for "specially designed" parts, components, accessories and attachments for items listed in this comment. Each of the commodities listed in ECCN 0A606, paragraphs .c through .f, is a piece of military equipment or a part or component thereof. Applying a license requirement to "specially designed" parts and components for such equipment serves to provide the U.S. Government with information about the equipment's disposition and use. BIS does not agree with the commenter that imposing a license requirement on components of components is problematic.

Vessels of War and Related Items; Submersible Vessels, Oceanographic Equipment and Related Items

Background

This rule makes final the provisions contained in the December 23 (vessels) and the December 23 (submersible vessels) rules. These two proposed rules from BIS were published in conjunction with two rules from the Department of State, Directorate of Defense Trade Controls that proposed to amend the list of articles controlled by USML Categories VI and XX (*see* 76 FR 80282, 80302 and 76 FR 80291, 80305, respectively).

Specifically, this final rule describes how surface vessels of war and related articles that the President determines no longer warrant control under Category VI (surface vessels of war and special naval equipment) of the USML will now be controlled on the CCL under new "600 series" ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609. The rule also describes how submersible vessels, oceanographic and associated equipment that the President has determined no longer warrant control on the USML Category VI or XX will now be controlled on the CCL under new "600 series" ECCNs 8A620, 8B620, 8D620, and 8E620.

Summary of Public Comments Submitted in Response to the Proposals Contained in the December 23 (Vessels) Rule Published by BIS

The public comment period for the December 23 (vessels) rule, which addressed controls on surface vessels of war and related articles, ended on February 6, 2012. BIS received comments from four respondents. Following is a summary of those comments, along with BIS's responses. The comments are organized by topic, with similar comments grouped together under the same heading.

ECCN 8A609.x ("Parts, "Components," "Accessories" and "Attachments" That are "Specially Designed" for a Commodity Enumerated in ECCN 8A609 (Except for 8A609.y) or a Defense Article Enumerated in USML Category VI and Not Specified Elsewhere in the USML or in 8A609.y)

Comment: Two respondents commented that Note 2 to proposed ECCN 8A609.x incorrectly referenced USML Category VI(g), instead of USML Category VI(f).

Response: This final rule corrects Note 2 to ECCN 8A609.x to refer to USML Category VI(f), which controls specified components, parts, accessories, attachments, and associated equipment for surface vessels of war and special naval equipment enumerated in USML Category VI. Note 2 indicates that the latter are excluded from control under ECCN 8A609.x.

ECCN 8A609.y (Specific "parts," "Components," "Accessories" and "Attachments" "Specially Designed" for a Commodity Controlled by ECCN 8A609 or for a Defense Article in USML Category VI and Not Specified Elsewhere in the USML)

Comment: One respondent questioned why proposed ECCN 8A609.y.12 referred to analog gauges and indicators only, and not also to "digital" gauges and indicators, because there is nothing inherently military about all "digital" parts and components.

Response: Since BIS does not intend that ECCN 8A609.y distinguish between the relative merits of "analog" and "digital" technologies, this final rule changes ECCN 8A609.y to refer to all gauges and indicators, regardless of whether they are "analog" or "digital." As published in this final rule, these gauges and indicators are now controlled under ECCN 8A609.y.10.

Comment: Two respondents recommended that additional items be included in the list of specific "parts," "components," and "accessories and

attachments" controlled by ECCN 8A609.y.

One respondent recommended that the following items be added to ECCN 8A609.y:

- Atmosphere control and monitoring equipment
- Environmental control and monitoring equipment
- Thermal insulation
- Trash handling systems
- Mooring, towing and dry dock equipment
- Anchoring systems
- Material corrosion and fouling control systems
- Damage-control equipment
- Firefighting equipment, fire suppression systems, extinguishers, water hoses
- Emergency water rescue equipment
- On-board cranes
- Non-structural bulkheads and flexible space arrangements
- Cargo doors
- Bunks, lockers, and living/recreational quarter equipment or fixtures
- Meeting and classroom equipment or fixtures
- Bridge screens, panels, and monitors
- Electrical cable, cableways, wire, tapes, distribution panels, circuit breakers, supply outlets, connectors, switches, and fixtures
- Fiber optic cable, cableways, fixtures, switches, and supply outlets
- Equipment foundations and shock mounts
- Fasteners, washers, O-rings, bushings, adapters, couplings, bolts and similar ancillary hardware
- Mountings and clamps (meant to keep computers, office furniture in place).

The other respondent recommended that the following items be added to ECCN 8A609.y:

- Air vents and outlets
- Cabin doors and door seals
- Crew and cabin seats and bunks
- Fire or smoke detection, prevention and suppression systems
- Gas detection and generation systems
- Heating, air-conditioning and air management equipment
- Junction boxes
- Lithium-ion batteries and battery cells
- Port hole and port hole seals.

Response: This final rule retains the scope of controls set forth in the December 23 (vessels) rule and does not add the additional items recommended by the commenters. In this regard, note that BIS has concluded that the technological significance of a "part," "component," "accessory" or "attachment" to the military character of a vessel should not be the sole determining factor as to whether a particular "part," "component," "accessory" or "attachment" is included in paragraph .x (requiring a license to all destinations other than Canada) or paragraph .y (requiring a license to a limited range of destinations) or classified under the designation "EAR99" (not listed on the CCL but subject to the EAR). BIS reached this conclusion in recognition of the national security and foreign policy justifications in support of the U.S. Government exercising control over the export and reexport of "parts," "components," "accessories" and "attachments" that, although they perform functions common to both civil and military vessels, are nonetheless in some way unique to, or "specially designed" for, vessels of war. Imposing export license requirements on such "parts," "components," "accessories" and "attachments" provides the U.S. Government with insight into whether persons in certain countries have military vessels or need to have such vessels repaired. These controls give the U.S. Government the ability to control the flow of such parts, components, accessories, and attachments consistent with our national security and foreign policy objectives. Nevertheless, the U.S. Government has decided that controlling such items on the ITAR is too restrictive and, accordingly, has created more flexible controls for such items in the new "600 series" ECCNs on the CCL.

Comment: One respondent recommended that ECCN 8A609.y.5 be rewritten to clarify that it controls "metal hydraulic, fuel, oil and air lines that are straight, bent, flexible, braided or varying internal cross sectional area."

Response: This final rule clarifies which items of this type are controlled under 8A609.y by including the following control language in ECCN 8A609.y.2: "Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems."

Comment: One respondent commented that the .y paragraphs in ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609 should be removed and that "parts" and "accessories and attachments" should not be controlled elsewhere in the 8Y609 ECCNs or in USML Category VI. Instead, only individually identified "required" "components" should be controlled.

Response: This final rule controls "parts," "components," "accessories" and "attachments" for commodities enumerated in the new 8Y609 ECCNs, consistent with the scope of the definition of "specially designed," as published in the April 16 (initial implementation) rule. Accordingly, an item is considered to be "specially designed," per paragraph (a) of the "specially designed" definition, if the item: (i) As a result of "development" has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or USML paragraph; or (ii) is a "part," "component," "accessory," "attachment," or "software" for use in or with a commodity or defense article 'enumerated' or otherwise described on the CCL or the USML. Nevertheless, a "part," "component," "accessory," "attachment," or "software" that otherwise would be controlled by paragraph (a) of the "specially designed" definition is released from being treated as "specially designed," if one or more of the exceptions contained in paragraph (b) of the "specially designed" definition applies. The "catch and release" construct employed in paragraphs (a) and (b), respectively, of the "specially designed" definition is intended to work in combination to catch all items that may warrant being controlled as "specially designed." Paragraph (b) of the definition tries, to the extent possible, to release those "parts," "components," "accessories," "attachments," or "software" that the U.S. Government has determined, in all cases, do not warrant being controlled as "specially designed."

ECCN 8E609.a ("Technology" "Required" for the "Development," "Production," Operation, Installation, Maintenance, Repair, Overhaul or Refurbishing of Commodities Controlled by ECCN 8A609, 8B609, or 8C609, or "Software" Controlled by ECCN 8D609, Except for ECCN 8A609.y, 8B609.y, 8C609.y, or 8D609.y)

Comment: One respondent recommended that the phrase "operation, installation, maintenance, repair, or overhaul," in ECCN 8E609.a, be removed and replaced with the term "use," as defined in the EAR.

Response: This final rule uses the phrase "operation, installation, maintenance, repair, overhaul, or refurbishing" in ECCN 8E609.a, because this phrase is intended to include each of the specific sub-elements of "use," as defined in the EAR.

Production "Software" and "Technology" Controlled Under ECCNs 8D609 and 8E609, Respectively

Comment: One respondent stated that "software" and "technology" should be controlled by the same agency that controls production equipment (i.e.,

Commerce). In that event, the respondent recommended that ECCN 8D609 be expanded to control "software" "required" for the "development" or "production" of defense articles in USML Category VI(a) through (f) and the "software" portion of USML Category VI(g). In addition, the respondent recommended that ECCN 8E609 be expanded to control "technology" "required" for the "development" or "production" of defense articles in USML Category VI(a) through (f) and the "software" portion of USML Category VI(g); and the design of, the assembly of components into, and the operation, maintenance and repair of, complete production installations for defense articles in USML Category VI(a) through (f) and the "software" portion of USML Category VI(g), and items in ECCN 8A609, 8B609 or 8D609, even if the "components" of such production installations are not specified on either the CCL or the USML.

Response: BIS did not adopt this recommendation. As discussed previously in the preamble, the changes described in this rule and in the State Department's rule amending Categories VI, VII, XIII, and XX of the USML are based on a review of those categories by the Defense Department, which worked with the Departments of State and Commerce in preparing the amendments. The review was focused on identifying the types of articles that are now controlled by the USML that either: (i) Are inherently military and otherwise warrant control on the USML; or (ii) if of a type common to civil applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States and that are almost exclusively available from the United States. If an article was found to satisfy either or both of those criteria, the article remains on the USML. Based on the review of USML Category VI, ECCN 8D609 controls "software" for items controlled under ECCN 8A609, 8B609, or 8C609 only (and not "software" for any of the defense articles enumerated in USML Category VI), while ECCN 8E609 controls "technology" for items controlled under ECCN 8A609, 8B609, 8C609, or 8D609 only (and not "technology" for any of the defense articles enumerated in USML Category VI). In short, as a result of the review, "software" and "technology" for surface vessels of war, special naval equipment, and related defense articles enumerated in USML Category VI will be controlled under Category VI and not under the related "software" and "technology" entries on the CCL (i.e., ECCNs 8D609 and 8E609, respectively).

Use of the Term "Specially Designed" in the 8Y609 ECCNs

Comment: One respondent recommended that the proposed definition of "specially designed" (and, in particular, the "parts" and "components" exclusions therein) be changed to avoid the overly broad control of a large and diverse array of militarily insignificant items used on military surface vessels and related articles. In the respondent's view, the provisions of the proposed definition applicable to "parts" and "components," if read literally, would capture "parts" and "components" for practically every military item enumerated on the CCL or the USML, unless the "parts" and "components" are separately enumerated (i.e., either in a USML subcategory or in an ECCN that does not have "specially designed" as a control criterion) or fall within one of the four limited exclusions in subparagraph (d) of the proposed definition (as published in the July 15 (framework) rule. To clarify the scope of the definition, with respect to "parts" and "components," the respondent recommended that ECCN 8A609.y be revised to add the following types of minor "parts:" threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common type hardware (e.g., washers, spacers, insulators, connectors, diodes, resistors, grommets, bushings), springs, wire, seals, packings, blankets, insulation, decals, and name/information plates.

In addition, the respondent noted that the application of the proposed "specially designed" definition to items other than "parts" and "components" was ambiguous with respect to the phrase "peculiarly responsible" (i.e., the significance of an item's properties to the stated performance characteristics or functions), which could be interpreted as meaning that the properties are both "necessary" and "sufficient" to achieve or exceed the stated performance parameters. To address this ambiguity, the respondent recommended that BIS provide examples of how the phrase "peculiarly responsible" would be applied in determining whether or not an item was "specially designed."

Response: This final rule does not adopt the respondent's recommendation, although the definition of "specially designed" published in the April 16 (initial implementation rule) did include a Note to paragraph (a)(1) to provide more detail on applying the peculiarly responsible standard, including providing two examples for applying the peculiarly responsible standard for purposes of paragraph (a)(1). This rule controls "parts," "components," "accessories" and "attachments" for commodities enumerated in the new 8Y609 ECCNs, consistent with the scope of the definition of "specially designed," as published in the April 16 (initial implementation) rule.

With respect to the phrase "peculiarly responsible," as applied in subparagraph (a)(1) of the proposed "specially designed" definition, most respondents who commented on the proposed "specially designed" definition in the July 15 (framework) rule found this part of the definition to be clear—perhaps, this is because this part of the definition was taken from the definition of "required" in § 772.1 of the EAR. Although the "required" definition applies only to "software" and "technology," BIS applied the defining principle of that definition in paragraph (a)(1) of the "specially designed" definition, as published in the April 16 (initial implementation) rule. Therefore, within the context of paragraph (a)(1) of the "specially designed" definition, the phrase "peculiarly responsible" means not merely that an item captured by this paragraph is somehow capable of use with a controlled item, but that something was done during the item's development to enable it to achieve or exceed the performance levels, characteristics, or functions described in a referenced ECCN or USML paragraph. If, for example, the control characteristic of a vehicle indicates that the vehicle be "specially designed" for military use, then, at a minimum, any "part" or "component" that was, as a result of development, deliberately made for and unique to such a military vehicle would be considered peculiarly responsible for meeting the control characteristic of the vehicle, regardless of the part or component's capabilities or functions. The only control characteristic for such vehicles is that the vehicle itself was "specially designed" for military use, not that it performed at any particular level. Whether the part or component is ultimately considered to be "specially designed" depends upon whether any of the releases in paragraph (b) apply.

For purposes of paragraph (a)(1) in the definition of "specially designed," this principle applies equally to "parts," "components," "accessories" and "attachments" for commodities. In addition, note that an item is considered to be "specially designed," per paragraph (a)(2) of the "specially designed" definition, as published in

the April 16 (initial implementation) rule, if the item is a "part," "component," "accessory," "attachment," or "software" for use in or with a commodity or defense article 'enumerated' or otherwise described on the CCL or the USML. Even so, a "part," "component," "accessory," "attachment," or "software" that otherwise would be controlled by paragraph (a) of the "specially designed" definition would be released from being treated as "specially designed," if one or more of the exceptions contained in paragraph (b) of the "specially designed" definition applies. The "catch and release" construct employed in paragraphs (a) and (b), respectively, of the "specially designed" definition is intended to work in combination to catch all items that may warrant being controlled as "specially designed." Therefore, the paragraph (a) "catch" must be broad in scope. To compensate for those instances in which paragraph (a) of the definition may overreach, paragraph (b) of the definition seeks, to the extent possible, to release those "parts," "components," "accessories," "attachments," or "software" that the U.S. Government has determined, in all cases, do not warrant being controlled as "specially designed." For example, paragraph (b)(2) in the definition of "specially designed" exempts specified "parts," and "components" from the definition, if the item is, regardless of "form" or "fit," a fastener (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, or solder.

Changes to Controls on Vessels Made by This Rule

This final rule creates five new 600 series ECCNs in CCL Category 8 (ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609) that control articles the President has determined no longer warrant control under USML Category VI. These amendments are discussed in more detail below.

New ECCN 8A609 (Surface Vessels of War and Related)

Paragraph .a of ECCN 8A609 controls surface vessels of war that are "specially designed" for military use, but not enumerated in the USML. Paragraph .b of ECCN 8A609 controls non-magnetic diesel engines that have a power output of 50 hp or more and either of the following: (1) A non-magnetic content exceeding 25 percent of total weight or (2) non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines. These diesel engines were listed under ECCN 8A620 in BIS's December 23 (submersible vessels) rule that proposed to control on the CCL submersible vessels, oceanographic and associated equipment determined by the President to no longer warrant control under USML Category VI or Category XX. However, this final rule controls these engines under new ECCN 8A609, instead of new ECCN 8A620 (Submersible vessels oceanographic and associated equipment), because they are generally designed for use in surface vessels, rather than submersible vessels. Paragraphs .c through .w of ECCN 8A609 are reserved. Paragraph .x controls "parts," "components," "accessories" and "attachments" (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are "specially designed" for a commodity in paragraph .a or .b or for a defense article in USML Category VI. This final rule specifically excludes from 8A609.x any "parts," "components," "accessories" and "attachments" for commodities controlled under 8A609.y. Paragraph .y consists of specific types of commodities that, if "specially designed" for a commodity subject to control in ECCN 8A609 or a defense article in USML Category VI, warrant less strict controls because they have little or no military significance. Commodities listed in paragraph .y are subject to antiterrorism (AT Column 1) controls only.

This final rule does not add gas turbine engines for military vessels of war to new ECCN 8A609. Instead, the April 16 (initial implementation) rule created a new ECCN 9A619 and included gas turbine engines and related items for military aircraft in that ECCN. This rule adds gas turbine for surface vessels of war and military vehicles to that ECCN .

This final rule adds a note to ECCN 8A609 specifying the changes that may be made to certain vessels built prior to 1950 without changing the vessel's status as a vessel built prior to 1950 and unmodified since 1949. Similar language concerning such modifications is in the Department of State rule that is being published simultaneously with this rule. For purposes of this note, the term modified does not include installation of safety features required by law, cosmetic changes (e.g., different paint), or the addition of "parts" or "components" otherwise available prior to 1950. Including this clarifying language in both rules will make it easier to distinguish vessels on the USML from those on the CCL.

New ECCN 8B609 (Test, Inspection, and Production "Equipment" and Related Commodities "Specially Designed" for the "Development," "Production," Repair, Overhaul, or Refurbishing of Commodities in ECCN 8A609 or USML Category VI (Except for Cat VI(f)(7)))

ECCN 8B609.a controls test, inspection, and production "equipment" "specially designed" for the "development," "production," repair, overhaul, or refurbishing of surface vessels of war and related commodities enumerated in ECCN 8A609 (except for items in 8A609.y) or in USML Category VI (except for articles enumerated in USML Cat VI(f)(7)). This final rule adds an exclusion to 8B609.a that applies to test, inspection, and production "equipment" "specially designed" for the "development" or "production" of articles in USML Cat VI(f)(7). Paragraph .b is reserved.

New ECCN 8C609 (Materials "Specially Designed" for the "Development" or "Production" of Commodities Controlled by 8A609 Not Elsewhere Specified in the USML)

ECCN 8C609.a controls materials "specially designed" for the "development" or "production" of surface vessels of war and related commodities enumerated in ECCN 8A609 (except for items in 8A609.y) that are not specified elsewhere on the USML. The December 23 (vessels) rule proposed language in the ECCN heading, in 8C609.a, and in the Note thereto, that would have limited the scope of the materials controlled by ECCN 8C609 to those materials not controlled by other ECCNs on the CCL. The effect of that language would have been to make materials specifically mentioned in a non-"600 series" ECCN controlled by that non-"600 series" ECCN, even if they were "specially designed" for a military vessel, "part," "component," "accessory," or "attachment" that is controlled by ECCN 8A609. Conversely, the April 16 (initial implementation) rule adopted a CCL order of review (*see* 78 FR 22735, April 16, 2013) in Supplement No. 4 to part 774) that gives "600 series" ECCNs precedence over non-"600 series" ECCNs when classifying an item. Accordingly, this final rule does not include the proposed language from the December 23 (vessels) rule that would have limited the scope of the materials controlled by ECCN 8C609 to those materials that are not controlled under other ECCNs on the CCL.

New ECCN 8D609 ("Software" "Specially Designed" for the "Development," "Production," Operation or Maintenance of Commodities Controlled by 8A609, 8B609, or 8C609)

ECCN 8D609.a controls "software" "specially designed" for the "development," "production," operation, or maintenance of commodities controlled by ECCN 8A609, ECCN 8B609, or ECCN 8C609 (except for commodities controlled by ECCN 8A609.y). Paragraph .b is reserved. ECCN 8D609.y applies to specific "software" that is "specially designed" for the "development," "production," operation, or maintenance of commodities enumerated in ECCN 8A609.y.

New ECCN 8E609 ("Technology" "Required" for the "Development," "Production," Operation, Installation, Maintenance, Repair, Overhaul, or Refurbishing of Commodities Controlled by 8A609, 8B609, or 8C609, or "Software" Controlled by 8D609)

ECCN 8E609.a controls "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of items enumerated in ECCN 8A609, 8B609, 8C609, or 8D609 (except for commodities enumerated in ECCN 8A609.y). Paragraph .b is reserved. ECCN 8E609.y applies to specific "technology" that is "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of items enumerated in ECCN 8A609.y.

Changes to the EAR Amendments Proposed in the December 23 (Vessels) Rule

Non-Magnetic Diesel Engines Controlled Under New ECCN 8A609.b

As previously discussed, the December 23 (submersible vessels) rule published by BIS proposed that new ECCN 8A620.d.3 control non-magnetic diesel engines having a power output of 50 hp or more, and either of the following characteristics: (i) A non-magnetic content exceeding 25 percent of total weight or (ii) non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines. However, because these non-magnetic diesel engines are generally designed for use in surface vessels, rather than submersible vessels, this final rule controls these engines under new ECCN 8A609.b.

Changes To Make New ECCN 8C609 Consistent With the CCL Order of Review

The April 16 (initial implementation) rule adopted a CCL order of review (see Supplement No. 4 to part 774) that gives "600 series" ECCNs precedence over non-"600 series" ECCNs when classifying an item. Accordingly, the control language for ECCN 8C609 in this final rule differs from the control language proposed in the December 23 (vessels) rule in that it does not limit the scope of the materials controlled by ECCN 8C609 to materials that are not controlled elsewhere on the CCL. Practically speaking, this means that, if an item subject to the EAR is described by a "600 series" ECCN (e.g., ECCN 8C609), then the item would be controlled under the "600 series" ECCN even if it were also described elsewhere on the CCL under a non-"600 series" ECCN.

Summary of Public Comments Submitted in Response to the Proposals Contained in the December 23 (Submersible Vessels) Rule Published by BIS

The public comment period for the December 23 (submersible vessels) rule, which addressed controls on submersible vessels, oceanographic equipment and related articles, ended on February 6, 2012. BIS received comments from four respondents. Following is a summary of those comments, along with BIS's responses. The comments are organized by topic, with similar comments grouped together under the same heading.

ECCN 8A620.d (Engines and Propulsion Systems)

Comment: One respondent recommended that the word "crankcase" be replaced with the word "crankshaft" in ECCN 8A620.d.3 (Non-magnetic diesel engines with a power output of 50 hp or more), as proposed in the December 23 (submersible vessels) rule.

Response: This final rule retains the word "crankcase" in the control language, because "crankcase" more fully describes the types of items that are subject to control than the word "crankshaft." Specifically, the "crankcase" is often integrated with the cylinder bank(s), forming the engine block, and serves as the housing for the "crankshaft." In addition, note that the non-magnetic diesel engines that were proposed for control under new "600 series" ECCN 8A620.d.3 of the December 23 (submersible vessels) rule will now be controlled under new ECCN 8A609 (surface vessels of war and related commodities), instead of new ECCN 8A620, because these engines are generally designed for use in surface vessels, rather than submersible vessels.

ECCN 8A620.x ("Parts," "Components," "Accessories" and "Attachments" That Are "Specially Designed" for a Commodity Enumerated in ECCN 8A620 (Except for 8A620.b or .y) and Not Specified Elsewhere on the USML or in 8A620.y)

Comment: One respondent noted that proposed ECCN 8A620.x and .y deviate from similar proposed changes in other ECR rules in that neither paragraph controls specific "parts," "components," "accessories" and "attachments" for defense articles in USML Category XX. The respondent recommended that BIS include language in Note 2 to ECCN 8A620.x to clarify that 8A620.x and .y do not control "parts," "components," "accessories" and "attachments" for any defense articles enumerated in USML Category XX.

Response: The exclusion of "parts," "components," "accessories" and "attachments" for any defense articles in USML Category XX is clearly indicated in ECCN 8A620.x and .y, both of which refer only to items controlled under new "600 series" ECCN 8A620 and not to any defense articles in USML Category XX. For this reason, BIS did not make the recommended change in this final rule.

ECCN 8A620.y (Specific "Parts," "Components," "Accessories" and "Attachments" "Specially Designed" for a Commodity Subject to Control in This ECCN)

Comment: Two respondents recommended that additional items be included in the list of specific "parts," "components," and "accessories" and "attachments" controlled by ECCN 8A620.y.

One respondent recommended that the following items be added to ECCN 8A620.y:

- Thermal insulation
- Firefighting equipment, fire suppression systems, extinguishers, water hoses
- Emergency water rescue equipment
- Non-structural bulkheads and flexible space arrangements
- Bunks, lockers, and living/recreational quarter facilities
- Meeting and classroom facilities
- Electrical cable, cableways, wire, tapes, distribution panels, circuit breakers, supply outlets, connectors, switches, and fixtures

- Fiber optic cable, cableways, fixtures, switches, and supply outlets
- Equipment foundations and shock mounts
- Fasteners, washers, O-rings, bushings, adapters, couplings, bolts and similar ancillary hardware
- Mountings and clamps (meant to keep computers, office furniture in place).

The other respondent recommended that the following items be added to ECCN 8A620.y:

- Floats for 8A620.e commodities
- Cabin doors and door seals
- Crew and cabin seats and bunks
- Fire or smoke detection, prevention and suppression systems
- Junction boxes
- Lithium-ion batteries and battery cells
- Port hole and port hole seals.

Response: This final rule retains the scope of controls set forth in the December 23 (submersible vessels) rule. In this regard, note that BIS has concluded that the technological significance of a "part," "component," "accessory" or "attachment" to the military character of a submersible vessel should not be the sole determining factor as to whether a particular "part," "component," "accessory" or "attachment" is included in paragraph .x (requiring a license to all destinations other than Canada) or paragraph .y (requiring a license to a limited range of destinations) or classified under the designation "EAR99" (not listed on the CCL at all). BIS reached this conclusion in recognition of the national security and foreign policy justifications in support of the U.S. Government exercising control over the export and reexport of "parts," "components," "accessories" and "attachments" that, although they perform functions common to both civil and military submersible vessels, are nonetheless in some way unique to, or "specially designed" for, submersible vessels of war. Imposing export license requirements on such "parts," "components," "accessories" and "attachments" provides the U.S. Government with insight into whether persons in certain countries have military submersible vessels or need to have such vessels repaired. These controls give the U.S. Government the ability to control the flow of such parts, components, accessories, and attachments consistent with our national security and foreign policy objectives. Nevertheless, the U.S. Government has decided that controlling such items on the ITAR is too restrictive and, accordingly, has created more flexible controls for such items in the new "600 series" ECCNs on the CCL.

Comment: One respondent recommended that ECCN 8A620.y.5 be rewritten to clarify that it controls "metal hydraulic, fuel, oil and air lines that are straight, bent, flexible, braided or varying internal cross sectional area."

Response: This final rule clarifies which items of this type are controlled under 8A620.y by including the following control language under ECCN 8A620.y.2: "Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems."

ECCN 8B620 (Test, Inspection, and Production "Equipment" and Related Commodities "Specially Designed" for the "Development," "Production," Repair, Overhaul, or Refurbishing of Commodities Enumerated in ECCN 8A620)

Comment: One respondent stated that neither proposed ECCN 8B620 nor proposed USML Category XX addressed equipment "specially designed" to produce defense articles enumerated in USML Category XX. The respondent recommended that such equipment be controlled on the CCL under new ECCN 8B620.

Response: USML Category XX has been re-written to specifically capture equipment "specially designed" to produce defense articles in USML Category XX. Therefore, new ECCN 8B620 does not control this equipment.

Production "Software" and "Technology" Controlled Under ECCNs 8D620 and 8E620, Respectively

Comment: One respondent stated that "software" and "technology" should be controlled by the same agency that controls production equipment (i.e., Commerce). In that event, the respondent recommended that ECCN 8D620 be expanded to control "software" "required" for the "development" or "production" of defense articles in proposed USML Category XX(a) through (c) and the "software" portion of proposed USML Category XX(d). In addition, the respondent recommended that ECCN 8E620 be expanded to control "technology" "required" for the "development" or "production" of defense articles in proposed USML Category XX(a) through (c) and the "software" portion of proposed USML Category XX(d); and the design of, the assembly of components into, and the operation, maintenance and repair of, complete production installations for defense articles in proposed USML Category XX(a) through (c) and the "software" portion of proposed USML Category XX(d), and items in ECCN 8A620, 8B620 or 8D620, even if the "components" of such production installations are not specified on either the CCL or the USML.

Response: BIS did not adopt this recommendation. As discussed previously in the preamble, the changes described in this rule and in the State Department's rule amending Categories VI, VII, XIII, and XX of the USML are based on a review of those categories by the Defense Department, which worked with the Departments of State and Commerce in preparing the amendments. The review was focused on identifying the types of articles that are now controlled by the USML that either: (i) Are inherently military and otherwise warrant control on the USML; or (ii) if of a type common to civil applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States and that are almost exclusively available from the United States. If an article was found to satisfy either or both of those criteria, the article remains on the USML. Based on the review of USML Categories VI and XX, ECCN 8D620 controls "software" for items controlled under ECCN 8A620 or 8B620 only (and not "software" for any of the defense articles enumerated in USML Category XX), while ECCN 8E620 controls "technology" for items controlled under ECCN 8A620, 8B620, or 8D620 only (and not "technology" for any of the defense articles enumerated in USML Category XX). In short, as a result of the review, "software" and "technology" for submersible vessels and related defense articles enumerated in USML Category XX will be controlled under Category XX and not under the related "software" and "technology" entries on the CCL (i.e., ECCNs 8D620 and 8E620, respectively.

Use of the Term "Specially Designed" in the 8Y620 ECCNs

Comment: One respondent recommended that the proposed definition of "specially designed" (and, in particular, the "parts" and "components" exclusions therein) be changed to avoid the overly broad control of a large and diverse array of militarily insignificant items used on military surface vessels and related articles. In the respondent's view, the provisions of the proposed definition applicable to "parts" and "components," if read literally, would capture "parts" and "components" for practically every military item enumerated on the CCL or the USML, unless the "parts" and "components"

are separately enumerated (i.e., either in a USML subcategory or in an ECCN that does not have "specially designed" as a control criterion) or fall within one of the four limited exclusions in subparagraph (d) of the proposed definition (as published in the July 15 (framework) rule. To clarify the scope of the definition, with respect to "parts" and "components," the respondent recommended that ECCN 8A620.y be revised to add the following types of minor "parts": Threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common type hardware (e.g., washers, spacers, insulators, connectors, diodes, resistors, grommets, bushings), springs, wire, seals, packings, blankets, insulation, decals, and name/information plates.

In addition, the respondent noted that the application of the proposed "specially designed" definition to items other than "parts" and "components" was ambiguous with respect to the phrase "peculiarly responsible" (i.e., the significance of an item's properties to the stated performance characteristics or functions), which could be interpreted as meaning that the properties are both "necessary" and "sufficient" to achieve or exceed the stated performance parameters. To address this ambiguity, the respondent recommended that BIS provide examples of how the phrase "peculiarly responsible" would be applied in determining whether or not an item was "specially designed."

Response: This final rule does not adopt the respondent's recommendation, although the definition of "specially designed" published in the April 16 (initial implementation rule) did include a Note to paragraph (a)(1) to provide more detail on applying the peculiarly responsible standard, including providing two examples for applying the peculiarly responsible standard for purposes of paragraph (a)(1). This rule controls "parts," "components," and "accessories" and "attachments" for commodities enumerated in the new 8Y620 ECCNs, consistent with the scope of the definition of "specially designed," as published in the April 16 (initial implementation) rule.

With respect to the phrase "peculiarly responsible," as applied in subparagraph (a)(1) of the proposed "specially designed" definition, most respondents who commented on the proposed "specially designed" definition in the July 15 (framework) rule found this part of the definition to be clear—perhaps, this is because this part of the definition was taken from the definition of "required" in § 772.1 of the EAR. Although the "required" definition applies only to "software" and "technology," BIS applied the defining principle of that definition in paragraph (a)(1) of the "specially designed" definition, as published in the April 16 (initial implementation) rule. Therefore, within the context of paragraph (a)(1) of the "specially designed" definition, the phrase "peculiarly responsible" means that an item captured by this paragraph is not merely somehow capable of use with a controlled item, but that something was done during the item's development to enable it to achieve or exceed the performance levels, characteristics, or functions described in a referenced ECCN or USML paragraph. For purposes of paragraph (a)(1) in the definition of "specially designed," this principle applies equally to "parts," "components," "accessories" and "attachments" for commodities. In addition, note that an item is considered to be "specially designed," per paragraph (a)(2) of the "specially designed" definition, as published in the April 16 (initial implementation) rule, if the item is a "part," "component," "accessory," "attachment," or "software" for use in or with a commodity or defense article 'enumerated' or otherwise described on the CCL or the USML. Even so, a "part," "component," "accessory," "attachment," or "software" that otherwise would be controlled by paragraph (a) of the "specially designed" definition would be released from being treated as "specially designed," if one or more of the exceptions contained in paragraph (b) of the "specially designed" definition applies. The "catch and release" construct employed in paragraphs (a) and (b), respectively, of the "specially designed" definition is intended to work in combination to catch all items that may warrant being controlled as "specially designed." Therefore, the paragraph (a) "catch" must be broad in scope. To compensate for those instances in which paragraph (a) of the definition may overreach, paragraph (b) of the definition tries, to the extent possible, to release those "parts," "components," "accessories," "attachments," or "software" that the U.S. Government has determined, in all cases, do not warrant being controlled as "specially designed." For example, paragraph (b)(2) in the definition of "specially designed" exempts specified "parts" and "components" from the definition, if the item is, regardless of "form" or "fit," a fastener (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, or solder.

Changes to Controls on Submersible Vessels Made by This Rule

This final rule creates four new "600 series" ECCNs in CCL Category 8 (ECCNs 8A620, 8B620, 8D620, and 8E620) that control articles the President has determined no longer warrant control under USML Category VI or Category XX. These amendments are discussed in more detail below.

New ECCN 8A620 (Submersible Vessels, Oceanographic and Associated Equipment)

Paragraph .a of ECCN 8A620 controls submersible and semi-submersible vessels "specially designed" for a military use, but not enumerated on the USML (e.g., submarine rescue vehicles and Deep Submergence Vehicles (DSVs)). Paragraph .b of ECCN 8A620 controls submersible and semi-submersible vessels "specially designed" for cargo transport (submersible and semi-submersible vessels of a type known to have been used in illegal drug trafficking activities) and "parts," "components," "accessories" and "attachments" "specially designed" therefor. Paragraph .c of ECCN 8A620 controls harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor, not elsewhere specified on the USML or the CCL. Paragraph .d of ECCN 8A620 controls certain engines and propulsion devices for submersible or semi-submersible vessels (i.e., diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over "specially designed" for submarines). In a change from BIS's December 23 (submersible vessels) rule, paragraph .d does not control non-magnetic diesel engines that have a power output of 50 hp or more and either of the following: (1) A non-magnetic content exceeding 25 percent of total weight or (2) non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines. These engines are controlled under new ECCN 8A609 (surface vessels of war and related commodities), instead of new ECCN 8A620, because they are generally designed for use in surface vessels, rather than submersible vessels. In another change from BIS's December 23 (submersible vessels) rule, paragraph .d does not control electric motors "specially designed" for submarines and having all of the following: (i) A power output of more than 1,000 hp; (ii) quick reversing; (iii) liquid cooled; and

(iv) totally enclosed. These electric motors are controlled under USML Category XX, instead of ECCN 8A620. The Note to paragraph .d states that propulsion systems not controlled under ECCN 8A620 that are "specially designed" for an article controlled by USML Category XX are controlled by USML XX(b) or (c). Paragraphs .e and .f control submarine and torpedo nets and certain closed and semi-closed circuit (rebreathing) apparatus, respectively. Paragraphs .g through .w are reserved. Paragraph .x controls "parts," "components," "accessories" and "attachments" (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are "specially designed" for a commodity in paragraphs .a and .c through .f; however, paragraph .x does not include items "specially designed" for a defense article in USML Category VI or XX.

Paragraph .y contains specific types of commodities that, if "specially designed" for a commodity subject to control in ECCN 8A620, warrant less strict controls because they have little or no military significance. Commodities listed in paragraph .y are subject to antiterrorism (AT Column 1) controls only. The systems and equipment described in ECCN 8A620.y.14 through .y.20, as proposed in the December 23 (submersible vessels) rule, are not included in ECCN 8A620.y in this final rule. Any such systems and equipment that are subject to the EAR and not elsewhere specified on the CCL are classified under the designation "EAR99."

New ECCN 8B620 (Test, Inspection, and Production "Equipment" and Related Commodities "Specially Designed" for the "Development," "Production," Repair, Overhaul, or Refurbishing of Commodities Enumerated in ECCN 8A620)

ECCN 8B620.a controls test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A620 (except for items in 8A620.b and .y). Paragraph .b of ECCN 8B620 controls test, inspection, and production "equipment" and related commodities "specially designed" for the "development" or "production" of commodities enumerated in ECCN 8A620.b. Currently, ECCN 8B620 does not identify specific test, inspection, and production "equipment" and related commodities "specially designed" for the "development" or "production" of commodities enumerated in ECCN 8A620.y.

New ECCN 8D620 ("Software" "Specially Designed" for the "Development," "Production," Operation or Maintenance of Commodities Controlled by 8A620 or 8B620)

ECCN 8D620.a controls "software" "specially designed" for the "development," "production," operation, or maintenance of commodities controlled by 8A620 or 8B620 (except for commodities controlled by 8A620.b or .y or ECCN 8B620.b). Paragraph .b of ECCN 8D620 controls "software" "specially designed" for the "development," "production," operation, or maintenance of commodities enumerated in 8A620.b or 8B620.b. ECCN 8D620.y applies to specific "software" that is "specially designed" for the "development," "production," operation, or maintenance of commodities enumerated in ECCN 8A620.y.

New ECCN 8E620 ("Technology" "Required" for the "Development," "Production," Operation, Installation, Maintenance, Repair, Overhaul or Refurbishing of Commodities Controlled by 8A620 or 8B620, or "software" Controlled by 8D620)

ECCN 8E620.a controls "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A620 or 8B620 or "software" controlled by ECCN 8D620 (except for commodities controlled by ECCN 8A620.b or .y or ECCN 8B620.b, or "software" controlled by ECCN 8D620.b or .y). Paragraph .b of 8E620 controls "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A620.b or 8B620.b or "software" controlled by 8D620.b. ECCN 8E620.y applies to specific "technology" that is "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of items enumerated in ECCN 8A620.y.

Amendments to ECCN 8A018

This final rule also affects items controlled under ECCN 8A018. Specifically, engines and propulsion systems described in ECCN 8A018.b.1 will be moved to new ECCN 8A620.d as of the effective date of this final rule. In addition, anti-submarine and anti-torpedo nets described in ECCN 8A018.b.4 will be moved to new ECCN 8A620.e and closed and semi-closed circuit (rebreathing) apparatus described in ECCN 8A018.a will be moved to new ECCN 8A620.f, as of the effective date of this final rule. However, new ECCN 8A620.d will not control either electric motors described in ECCN 8A018.b.2 or non-magnetic diesel engines described in 8A018.b.3, as proposed in the December 23 (submersible vessels) rule. Instead, the former will be controlled under USML Category XX, while the latter will be controlled under new ECCN 8A609.b (since these engines are generally designed for use in surface vessels, rather than submersible vessels).

Consistent with the April 16 (initial implementation) rule and with the statement in the July 15 (framework) rule that 018 entries would remain in the CCL for a time, but only for cross-reference purposes, this rule amends ECCN 8A018 to remove all language except cross references to the controls for these items in new "600 series" ECCNs 8A609.b and 8A620.d, .e, and .f and in revised USML Category XX.

Changes to the EAR Amendments Proposed in the December 23 (Submersible Vessels) Rule

Engines Controlled Under New ECCN 8A620.d

As previously discussed, the December 23 (submersible vessels) rule published by BIS proposed that new ECCN 8A620.d.3 control non-magnetic diesel engines having a power output of 50 hp or more, and either of the following characteristics: (i) A non-magnetic content exceeding 25 percent of total weight or (ii) non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines. However, because these non-magnetic diesel engines are generally designed for use in surface vessels, rather than submersible vessels, these engines are now controlled under new ECCN 8A609.b, instead. In addition, new ECCN 8A620.d does not control electric motors, as proposed in the December 23 (submersible vessels) rule, that are "specially designed" for submarines and have all of the following: (i) A power output of more than 1,000 hp; (ii) quick reversing; (iii) liquid cooled; and (iv) totally enclosed. These electric motors are controlled under USML Category XX, instead.

Auxiliary and Miscellaneous Military Equipment

Background

The May 18 (auxiliary equipment) rule described BIS's proposal for how it would control auxiliary and miscellaneous military equipment, related articles, software and technology under USML Category XIII that no longer that no longer warrant control on the USML. That rule proposed controlling those items under five new ECCNs. That rule also proposed to include in those five new ECCNs items listed in WAML category ML17 that would be removed from the USML, or that are not specifically identified on the USML or CCL but were subject to USML jurisdiction. This final rule is based on the May 18 (auxiliary equipment) rule and on a review of the public comments thereon by the Departments of Defense, State and Commerce. The period for submitting comments on that rule closed July 2, 2012.

Changes Made to Controls on Auxiliary and Miscellaneous Military Equipment by This Rule

This rule implements the proposals of the May 18 (auxiliary equipment) rule by creating five new ECCNs to control auxiliary and miscellaneous military equipment and related articles the President determined no longer warrant control under USML Category XIII (Auxiliary Military Equipment) and the integration of certain WAML category ML17 items on the CCL as part of the new "600 series."

This rule controls some items that were classified under ECCNs 0A018, 0A918, and 0E018 now under new ECCNs 0A617 and 0E617.

Comments and Responses to the May 18 (Auxiliary Equipment) Rule

Three companies submitted comments to BIS regarding the May 18 (auxiliary equipment) rule. Their comments and BIS's responses are as follows.

General Observations

Comment: One commenter asserted that BIS omitted several items from WAML category ML17 in the proposed rule's list of equipment for ECCN 0A617. Specifically, the commenter said that BIS failed to include items in paragraph 17.a self-contained diving and underwater apparatus; 17.c–.e fittings, field engineer equipment, "robots"; 17.g–.i. nuclear power generating equipment, equipment and material, simulators; and 17.o & .p laser protection equipment, "fuel cells" in ECCN 0A617.

Response: The control in the EAR of the WAML category ML17 items the commenter identified are described in BIS's May 18 (auxiliary equipment) rule and are further described in the "related items" to 0A617 and in 0A617.y.

Comment: One commenter stated that proposed changes to companion USML Category XIII as proposed would result in only a small number of items proposed to be moved to the "600 series" on the CCL. The commenter further stated that jurisdictional clarity would provide few benefits for U.S. exporters if items that no longer warrant control as munitions items continue to be identified on the USML.

Response: BIS notes that the purpose of ECR and the resulting movement and revision of the list of items from USML categories was not intended to be an exercise to decontrol items *per se* but rather is an effort to identify items that need to be controlled on the USML consistent with the national security and foreign policy objectives of the effort.

ECCN 0A617: Miscellaneous Equipment, Materials, and Related Commodities

Comment: With regard to paragraph .a of ECCN 0A617 (construction equipment), a commenter expressed an expectation that this paragraph would control a substantial amount of construction material not currently controlled on the USML, subjecting the items to a worldwide licensing requirement, except Canada. A simple mobile crane designed to fit within a USML-controlled cargo aircraft would be caught simply on the basis of size. The commenter went on to say that this would result in precisely the type of militarily insignificant equipment that does not warrant such a stringent control.

Response: Upon further review, BIS has determined that such items do not warrant controls more than those applicable to 0A617.y and has revised the rule by placing construction equipment under paragraph .y of ECCN 0A617.

Comment: One commenter asked that BIS clarify what is covered or is meant by the term "test models," as proposed in the May 18 (auxiliary equipment) rule to be covered by paragraph .d of ECCN 0A617. The commenter went on to say that without the clarification the control could have significant licensing impact on all USML-controlled programs, as well as some systems in the EAR. As proposed, test models could include both physical and standard computer test models/programs. Exporters would be required to apply for a license for computer test models that simply validate form, fit and function or dynamic physical properties of an end item. The commenter recommended that this item be deleted. Existing USML and EAR controls are adequate to control sensitive test models.

Response: BIS does not accept the recommendation that test models under ECCN 0A617 be deleted. Instead, this rule clarifies in ECCN 0A617.d what is meant by test models for purposes of that entry, which does not control software. To the extent software is controlled, it is described in a D group ECCN. In the proposed rule, BIS stated that such items are identified in WAML category ML17.n and controlled in relation to the defense article they model, such as items in USML Categories VII(g) and VIII(h). However, to address the commenter's request for further guidance on what is meant by the term test model for purposes of complying with the EAR, and to track more closely with the WAML, this rule narrows ECCN 0A617.d to control test models for defense articles in USML Categories IV, VI, VII and VIII.

Comment: A commenter recommended that the description of items as proposed in the May 18 (auxiliary equipment) rule to be covered by then paragraph .y.1 of ECCN 0A617 (containers "specially designed for defense articles or items controlled by a "600 series") be modified if the proposed definition of "specially designed" in the June 19 (specially designed) rule changed or was not adopted. Positive criteria are needed for "parts," "components," "accessories," and "attachments" cited in the **Federal Register** notice. As proposed, the wording of 0A617.y.1 would be sufficient only to control containers that are part or component of a defense article or "600 series" item, or an accessory or attachment of such articles if it also enhances the article's usefulness or effectiveness.

Response: The intended scope of paragraph y.1 was to control containers as "end items." Containers "specially designed" for use in or with controlled items may be controlled without being a "part," "component," "accessory," or "attachment." To refine the scope of coverage, in this final rule, BIS revised the description of containers to be covered by ECCN 0A617.y.3 by limiting the containers to those that are not elsewhere specified on the CCL and that are "specially designed" for shipping or packing defense articles or "600 series" items.

Comment: A commenter recommended deleting field generators "specially designed" for military use covered by proposed paragraph .y.2 in ECCN 0A617. The commenter noted that the Department of State, Directorate of Defense Trade Controls determined in in a commodity jurisdiction determination that these items were classified under ECCN 2A994. The commenter added that this existing ECCN for portable electric generators and specially designed parts seems to be more suitable to control these generators/items.

Response: BIS does not adopt this recommendation. Items "specially designed" for military use are to be controlled in "600 series" items, particularly when listed on the WAML. Thus, BIS will control field generators specially designed for military use in 0A617.y. Items controlled by 2A994 continue to be controlled by 2A994.

ECCN 0C617 Miscellaneous Materials "Specially Designed" for Military Use

Comment: A commenter recommended that specific positive criteria be provided in the entry for proposed paragraph .a of ECCN 0C617—materials, coatings, and treatments for signature suppression, "specially designed" for military use that are not controlled by the USML Category XIII or ECCNs 1C001 or 1C101. The commenter stated that such criteria are needed to prevent misinterpretation of what is caught by the ECCN because the term significant suppression is not defined and lacks positive criteria as to what level of suppression would be caught by the ECCN. As proposed, use of thicker sheet metal or insulation (both are material) to reduce noise level (acoustic signature) could be construed as controlled by 0C617.a.

Response: To clarify the scope of the items covered by paragraph .a of ECCN 0C617, BIS revised the description of that paragraph. That paragraph now reads "[m]aterials, coatings and treatments for signature suppression, "specially designed" for military use to reduce detectability or observability and that are not controlled by USML Category XIII or ECCNs 1C001 or 1C101."

Detailed Description of 0Y617 ECCNs Final Provisions Compared to the Proposed Rule

New ECCN 0A617: Miscellaneous Equipment, Materials, and Related Commodities

The May 18 (auxiliary equipment) rule proposed to include in ECCN 0A617.a the control of construction equipment "specially designed" for military use, including such equipment "specially designed" for transport in aircraft controlled by USML Category VIII(a) or ECCN 9A610.a; and "parts," "components," "accessories," and "attachments" "specially designed" therefor, including crew protection kits used as protective cabs. Such items were controlled under ECCN 0A018.a as "construction equipment built to military specifications, including equipment specially designed for airborne transport; and specially designed parts and accessories for such construction equipment, including crew protection kits used as protective cabs," and are identified in WAML category ML 17.b. In response to comment and upon further review, BIS determined that construction equipment and "parts," "components," "accessories," and "attachments" for such equipment, if "specially designed" for a defense article or "600 series" end item appropriately will be controlled for anti-terrorism (AT) reasons only by paragraph .y.1 of ECCN 0A617. Paragraph .a is reserved.

As was proposed, ECCN 0A617.b controls concealment and deception equipment "specially designed" for military application that are not controlled in USML Category XIII(g), as well as "parts," "components," "accessories," and "attachments" "specially designed" therefor.

ECCN 0A617.c controls ferries, bridges (other than those described in ECCN 0A606 or USML Category VII), and pontoons if the ferries, bridges or pontoons are "specially designed" for military use. Although not explicitly named or described on the USML, these items were controlled by USML Category VII(g) and identified in WAML category ML 17.m.

In this final rule, ECCN 0A617.d controls test models "specially designed" for the "development" of defense articles controlled by the USML in Categories IV, VI, VII and VIII.

ECCN 0A617.e is reserved. The photointerpretation, stereoscopic plotting, and photogrammetry equipment originally proposed to be controlled in paragraph .e are retained on the USML.

ECCN 0A617.f controls "metal embrittlement agents," currently controlled by USML Category XIII(i) but not within the scope of the revised Category XIII the State Department has proposed. The term "metal embrittlement agents" is defined in the EAR the same way it is defined in the ITAR.

Paragraphs .g through .x are reserved. Unlike other proposed "600 series" ECCN rules previously published as a part of ECR, ECCN 0A617, and the other ECCNs in the 0Y617 series, still do not contain a catch-all control in the ".x" subparagraph for all parts and components "specially designed" for items in that category because neither USML Category XIII nor WAML category ML17 contain such a catch-all for auxiliary or miscellaneous military equipment. To the extent a part or component is controlled in this ECCN, it is described in the applicable subparagraphs.

Paragraph .y controls other commodities, as listed in the .y subparagraphs. However, in the May 18 (auxiliary equipment) rule, BIS proposed that ECCN 0A617.y.1 would control containers "specially designed" for military use, which are currently identified in WAML category ML 17.i. ECCN 0A617.y.2 would control military field generators, which are currently identified in WAML category ML 17.k. ECCN 0A617.y.3 would control military power-controlled searchlights and related items. Such items were classified under ECCN 0A918.a as "miscellaneous military equipment."

In this final rule, ECCN 0A617.y.1 controls construction equipment "specially designed" for military use, including such equipment "specially designed" for transport in aircraft controlled by USML Category VIII(a) or ECCN 9A610.a. "Parts," "components," "accessories," and "attachments" "specially designed" therefor, including crew protection kits used as protective cabs, are controlled in 0A617.y.2.

Containers "specially designed" for military use, which are currently identified in WAML category ML17.l, are controlled by ECCN 0A617.y.3. Military field generators, which are currently identified in WAML category ML17.k, are controlled by ECCN 0A617.y.4. Military power-controlled searchlights and related items are controlled by ECCN 0A617.y.5. Such items were classified under ECCN 0A918.a as "miscellaneous military equipment."

Finally, as noted in the May 18 (auxiliary equipment) rule, to the extent an item referred to in WAML category ML17 is already clearly controlled in another existing USML Category or ECCN, then the "related controls" note at the beginning of proposed ECCN 0A617 identifies where in the CCL or the USML it is controlled.

New ECCN 0B617: "Equipment" "specially designed" for commodities controlled by ECCN 0A617 or USML Category XIII

Consistent with the April 16 (initial implementation) rule, ECCN 0B617.a controls test, inspection, and production "equipment" not controlled by USML Category XIII(k) "specially designed" for the "production," "development," repair, overhaul, or refurbishing of commodities enumerated in ECCN 0A617 (except for 0A617.y) or USML Category XIII, and "parts," "components," "accessories," and "attachments" "specially designed" therefor. Paragraph .b is reserved.

A note to 0B617 explains that field engineer equipment "specially designed" for use in a combat zone and mobile repair shops "specially designed or modified to service military equipment, which are identified in WAML category ML17.d and 17.j," respectively, are classified under ECCN 0B617 to the extent that the items are not included in USML XIII(k).

New ECCN 0C617: Miscellaneous Materials "Specially Designed" for Military Use

ECCN 0C617.a controls materials, coatings and treatments for signature suppression, "specially designed" for military use to reduce detectability or observability and that are not controlled by the USML or ECCNs 1C001 or 1C101. The May 18 (auxiliary equipment) rule listed the units in which commodities controlled by this ECCN would be licensed as "End items in number; parts, components, accessories and attachments in $ value." This final rule replaces that sentence with "$ value," which is the unit used for licensing materials in other ECCNs. Unchanged from the May 18 (auxiliary equipment) rule, paragraph .b is reserved.

New ECCN 0D617: "Software" "Specially Designed" for Items Controlled by ECCN 0A617, 0B617 or 0C617

Consistent with the April 16 (initial implementation) rule, ECCN 0D617.a controls "software" "specially designed" for the "development," "production," operation or maintenance of commodities controlled by ECCN 0A617, "equipment" controlled by ECCN 0B617, or materials controlled by ECCN 0C617 as described in the proposed rule. Paragraphs .b through .x are reserved.

Consistent with the other implemented "600 series" software controls, the .y paragraphs for ECCN 0D617 controls specific "software" "specially designed" for the "production," "development," operation or maintenance of commodities controlled by ECCN 0A617.y.

New ECCN 0E617: "Technology" "Required" for Items Controlled by ECCN 0A617, 0B617, 0C617 or 0D617

As provided in the May 18 (auxiliary equipment) rule, ECCN 0E617.a controls "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 0A617, "equipment" controlled by ECCN 0B617, materials controlled by ECCN 0C617, or "software" controlled by ECCN 0D617. Items controlled by ECCN 0E617 include "technology" previously in ECCN 0E018 for the "production" of crew protection kits used as protective cabs (previously in ECCN 0A018.a and proposed for ECCN 0A617). Paragraphs .b through .x are reserved.

Subparagraph .y. of ECCN 0E617 controls specific "technology" "required" for the "production," "development," operation, installation, maintenance, repair, overhaul or refurbishing of items controlled by ECCNs 0A617.y or 0D617.y. ECCN 0E617.y.1 controls "technology" for military power-controlled searchlights and related items, which would be classified under ECCN 0A617.y.5, instead of .y.3 as originally proposed, (moving from ECCN 0A918.a). The "technology" for such items is classified under ECCN 0E617.y.

Regulatory Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This final rule would affect the following approved collections: Simplified Network Application Processing System (control number 0694–0088), which includes, among other things, license applications; license exceptions (0694–0137); voluntary self-disclosure of violations (0694–0058); recordkeeping (0694–0096); export clearance (0694–0122); and the Automated Export System (0607–0152).

As stated in the July 15 (framework) rule, BIS believed that the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted to BIS by approximately 16,000 annually. As the review of the USML progressed, the interagency group gained more specific information about the number of items that would come under BIS jurisdiction. As of the June 21 (transition) rule, BIS estimated the increase in license applications to be 30,000 annually, resulting in an increase in burden hours of 8,500 (30,000 transactions at 17 minutes each) under control number 0694–0088. BIS continues to review its estimate of this level of increase as more information becomes available. As described below, the *net* burden U.S. export controls impose on U.S. exporters will go down as a result of the transfer of less sensitive military items to the jurisdiction of the CCL and the application of the license exceptions and other provisions set forth in this rule.

Some items formerly on the USML will become eligible for License Exception STA under this rule. Other such items may become eligible for License Exception STA upon approval of an eligibility request. BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 14,758 hours (12,650 transactions at 1 hour and 10 minutes each). BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR.

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

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) 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. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy that this rule would not have a significant impact on a substantial number of small entities. The rationale for that certification was stated in the preambles to proposed rules at 76 FR 76085, 76091, December 6, 2011; 76 FR 80282, 80287, December 23, 2011; 76 FR 80291, 80298, December 23, 2011; and 77 FR 29564, 29570, May 18, 2012. BIS received no comments on that rationale and is making no changes to it for this final rule. Therefore, it is not repeated here.

List of Subjects

15 CFR Part 740

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

15 CFR Part 742

Exports, Terrorism.

15 CFR Parts 770 and 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 2. Section 740.20 is amended by revising paragraphs (b)(3)(iii) and (g)(1), as added April 16, 2013, at 78 FR 22718, effective October 15, 2013, to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(b) * * *

(3) * * *

(iii) License Exception STA may not be used to export, reexport, or transfer (in-country) end items described in ECCN 0A606.a, ECCN 8A609.a, ECCN 8A620.a or .b, or ECCN 9A610.a until after BIS has approved their export under STA under the procedures set out in § 740.20(g).

* * * * *

(g) * * *

(1) *Applicability.* Any person may request License Exception STA eligibility for end items described in ECCN 0A606.a, ECCN 8A609.a, ECCN 8A620.a or .b, or ECCN 9A610.a.

* * * * *

PART 742—[AMENDED]

■ 3. The authority citation paragraph for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

■ 4. Section 742.6 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(4) * * *

(i) *License Requirements Applicable to Most RS Column 2 Items.* As indicated in the CCL and in RS Column 2 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except Australia, Japan, New Zealand, and countries in the North Atlantic Treaty Organization (NATO) for all items in ECCNs on the CCL that include RS Column 2 in the Country Chart column of the "License Requirements" section.

* * * * *

PART 770—[AMENDED]

■ 5. The authority citation paragraph for part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

§ 770.2 [Amended]

■ 6. Section 770.2 is amended by removing and reserving paragraph (h).

PART 772—[AMENDED]

■ 7. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 8. Section 772.1 is amended by adding a definition for "metal embrittlement agents" in alphabetical order to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Metal embrittlement agents. (Cat. 0)—Non-lethal weapon substances that alter the crystal structure of metals within a short time span. Metal embrittlement agents severely weaken metals by chemically changing their molecular structure. These agents are compounded in various substances to include adhesives, liquids, aerosols, foams, and lubricants.

* * * * *

PART 774—[AMENDED]

■ 9. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]—Export Control Classification Number (ECCN) 0A018 is amended by:

■ a. Adding a sentence to the end of the Related Controls paragraph in the List of Items Controlled section as set forth below; and

■ b. Removing and reserving paragraph .a in the Items paragraph of the List of Items Controlled section:

0A018 Items on the Wassenaar Munitions List

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * * (1) See 0A979, 0A988, and 22 CFR 121.1 Categories I(a), III(b-d), and X(a). (2) See ECCN 0A617.y.1 and .y.2 for items formerly controlled by ECCN 0A018.a.

Related Definitions: * * *

Items:

a. [RESERVED].

* * * * *

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items] add new ECCNs 0A606 and 0A617 between ECCNs 0A521 and 0A918 to read as follows:

0A606 Ground vehicles and related commodities, as follows (see List of Items Controlled): License Requirements

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 0A606.b and .y.	NS Column 1
NS applies to 0A606.b.	NS Column 2
RS applies to entire entry, except 0A606.b and .y.	RS Column 1
RS applies to 0A606.b.	RS Column 2
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0A606.y.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500

GBS: N/A

CIV: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 0A606.a, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for "600 series" end items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0A606.

List of Items Controlled

Unit: Equipment in number; "parts", "components", "accessories" and "attachments" in $ value

Related Controls: (1) The ground vehicles, other articles, technical data (including software) and services described in 22 CFR part 121, Category VII are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.

Related Definitions: N/A

Items:

a. Ground vehicles, whether manned or unmanned, "specially designed" for a military use and not enumerated in USML Category VII.

Note 1 to paragraph .a: *For purposes of paragraph .a, "ground vehicles" include (i) tanks and armored vehicles manufactured prior to 1956 that have not been modified since 1955 and that do not contain a functional weapon or a weapon capable of becoming functional through repair; (ii) military railway trains except those that are armed or are "specially designed" to launch missiles; (iii) unarmored military recovery and other support vehicles; (iv) unarmored, unarmed vehicles with mounts or hard points for firearms of .50 caliber or less; and (iv) trailers "specially designed" for use with other ground vehicles enumerated in USML Category VII or ECCN 0A606.a, and not separately enumerated in USML Category VII. For purposes of this note, the term "modified" does not include incorporation of safety features required by law, cosmetic changes (e.g., different paint or repositioning of bolt holes) or addition of "parts" or "components" available prior to 1956.*

Note 2 to paragraph .a: *A ground vehicle's being "specially designed" for military use for purposes of determining controls under paragraph .a. entails a structural, electrical or mechanical feature involving one or more components that are "specially designed" for military use. Such components include:*

a. Pneumatic tire casings of a kind specially designed to be bullet-proof;

b. Armored protection of vital parts, (e.g., fuel tanks or vehicle cabs);

c. Special reinforcements or mountings for weapons;

d. Black-out lighting.

b. Other ground vehicles, "parts" and "components," as follows:

b.1. Unarmed vehicles that are derived from civilian vehicles and that have all of the following:

b.1.a. Manufactured or fitted with materials or components other than reactive or electromagnetic armor to provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better;

b.1.b. A transmission to provide drive to both front and rear wheels simultaneously, including those vehicles having additional wheels for load bearing purposes whether driven or not;

b.1.c. Gross vehicle weight rating (GVWR) greater than 4,500 kg; and

b.1.d. Designed or modified for off-road use.

b.2. "Parts" and "components" having all of the following:

b.2.a. "Specially designed" for vehicles specified in paragraph .b.1 of this entry; and

b.2.b. Providing ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better.

Note 1 to paragraph b: *Ground vehicles otherwise controlled by 0A606.b.1 that contain reactive or electromagnetic armor are subject to the controls of USML Category VII.*

Note 2 to paragraph b: *ECCN 0A606.b.1 does not control civilian vehicles "specially designed" for transporting money or valuables.*

Note 3 to paragraph b: *"Armored" means not having installed weapons, installed mountings for weapons, or special reinforcements for mounts for weapons.*

c. Air-cooled diesel engines and engine blocks for armored vehicles that weigh more than 40 tons.

d. Fully-automatic continuously variable transmissions for tracked combat vehicles.

e. Deep water fording kits "specially designed" for ground vehicles controlled by ECCN 0A606.a or USML Category VII.

f. Self-launching bridge components not enumerated in USML Category VII(g) "specially designed" for deployment by ground vehicles enumerated in USML Category VII or this ECCN.

g. through w. [RESERVED]

x. "Parts", "components", "accessories" and "attachments" that are "specially designed" for a commodity enumerated in ECCN 0A606 (other than 0A606.b or 0A606.y) or a defense article enumerated in USML Category VII and not elsewhere specified on the USML or in 0A606.y.

Note 1: *Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacture where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 0A606.x are controlled by ECCN 0A606.x.*

Note 2: *"Parts," "components," "accessories" and "attachments" enumerated in USML paragraph VII(g) are subject to the controls of that paragraph. "Parts," "components," "accessories" and "attachments" enumerated in ECCN 0A606.y are subject to the controls of that paragraph.*

y. Specific "parts", "components", "accessories" and "attachments" "specially designed" for a commodity enumerated in this ECCN (other than ECCN 0A606.b) or for a defense article in USML Category VII and not elsewhere specified on the USML or the CCL, as follows:

y.1. Brake discs, rotors, drums, calipers, cylinders, pads, shoes, lines, hoses, vacuum boosters, and parts therefor;

y.2. Alternators and generators;

y.3. Axles;

y.4. Batteries;

y.5. Bearings (e.g., ball, roller, wheel);

y.6. Cables, cable assemblies, and connectors;

y.7. Cooling system hoses;

y.8. Hydraulic, fuel, oil, and air filters, other than those controlled by ECCN 1A004;

y.9. Gaskets and o-rings;

y.10. Hydraulic system hoses, fittings, couplings, adapters, and valves;

y.11. Latches and hinges;

y.12. Lighting systems, fuses, and components;

y.13. Pneumatic hoses, fittings, adapters, couplings, and valves;

y.14. Seats, seat assemblies, seat supports, and harnesses;

y.15 Tires, except run flat; and

y.16 Windows, except those for armored vehicles.

0A617 Miscellaneous "equipment," materials, and related commodities (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 0A617.y.	NS Column 1
RS applies to entire entry, except 0A617.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0A617.y.	See § 764.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0A617.

List of Items Controlled

Unit: "End items" in number; "parts," "components," "accessories," and "attachments" in $ value.
Related Controls: (1) Defense articles, such as materials made from classified information, that are controlled by USML Category XIII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content. (3) For controls on self-contained diving and underwater swimming apparatus and related commodities, see ECCN 8A620.f. (4) For controls on robots, robot controllers, and robot end-effectors, see USML Category VII and ECCNs 0A606 and 2B007. (5) "Libraries," *i.e.*, parametric technical databases, "specially designed" for military use with equipment controlled by the USML or a "600 series" ECCN are controlled by the technical data and technology controls pertaining to such items. (6) For controls on nuclear power generating equipment or propulsion equipment, including "nuclear reactors," "specially designed" for military use, and parts and components "specially designed" therefor, see USML Categories VI, XIII, XV, and XX. (7) Simulators "specially designed" for military "nuclear reactors" are controlled by USML Category IX(b). (8) See USML Categories X, XI and XII for laser protection equipment (e.g., eye and sensor protection) "specially designed" for military use. (9) "Fuel cells" "specially designed" for a defense article not on the USML or a commodity controlled by a "600 series" ECCN are controlled according to the corresponding "600 series" ECCN for such end items. (10) See USML Category XV for controls on fuel cells specially designed for satellite or spacecraft.
Items:

a. [RESERVED]

b. Concealment and deception equipment "specially designed" for military application, including special paints, decoys, smoke or obscuration equipment and simulators, and "parts," "components," "accessories," and "attachments" "specially designed" therefor, not controlled by USML Category XIII.

c. Ferries, bridges (other than those described in ECCN 0A606 or USML Category VII), and pontoons, "specially designed" for military use.

d. Test models "specially designed" for the "development" of defense articles controlled by USML Categories IV, VI, VII and VIII.

e. [RESERVED]

f. "Metal embrittlement agents."

g. through x. [RESERVED]

y. Other commodities as follows:

y.1. Construction equipment "specially designed" for military use, including such equipment "specially designed" for transport in aircraft controlled by USML VIII(a) or ECCN 9A610.a.

y.2. "Parts," "components," "accessories," and "attachments" "specially designed" for commodities in paragraph .y.1 of this entry, including crew protection kits used as protective cabs.

y.3. Containers, n.e.s., "specially designed" for shipping or packing defense articles or items controlled by a "600 series" ECCN.

y.4. Field generators "specially designed" for military use.

y.5. Power controlled searchlights and control units therefor, "specially designed" for military use, and "equipment" mounting such units.

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A918 is amended by:

■ a. revising the License Exceptions section; and

■ b. revising the List of Items Controlled section, to read as follows:

0A918 Miscellaneous Military Equipment Not on the Wassenaar Munitions List (see List of Items Controlled).

* * * * *

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: In Number.
Related Controls: See ECCN 0A617.y.5 for items formerly controlled by ECCN 0A918.a.
Related Definitions: N/A
Items: Bayonets.

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add new ECCNs 0B606 and 0B617 between ECCNs 0B521 and 0B986 to read as follows:

0B606 Test, inspection, and production "equipment" and related commodities, not enumerated on the USML, "specially designed" for the "development," "production" repair, overhaul, or refurbishing of commodities enumerated in ECCN 0A606 or USML Category VII (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0B606.

List of Items Controlled

Unit: Equipment in units. "Parts," "components," "accessories," and "attachments" in $ value.
Related Controls: (1) Ground vehicles, other articles, technical data (including software) and services described in 22 CFR part 121, Category VII are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.
Related Definitions: N/A
Items:

a. Test, inspection, and production "equipment" "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated in ECCN 0A606 (except for 0A606.b or 0A606.y) or in USML Category VII, and "parts," "components," "accessories" and "attachments" "specially designed" therefor.

Note 1: *ECCN 0B606 includes (i) armor plate drilling machines, other than radial drilling machines, (ii) armor plate planing machines, (iii) armor plate quenching presses; and (iv) tank turret bearing grinding machines.*

b. Environmental test facilities "specially designed" for the certification, qualification, or testing of commodities enumerated in ECCN 0A606 (except for 0A606.b or 0A606.y) or in USML Category VII, and "equipment" "specially designed" therefor.

0B617 Test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated in ECCN 0A617 or USML Category XIII, and "parts," "components," "accessories," and "attachments" "specially designed" therefor (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0B617.

List of Items Controlled

Unit: "Equipment" in number; "parts," "component," "accessories" and "attachments" in $ value.
Related Controls: See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.
Related Definitions: N/A
Items:
a. Test, inspection, and production "equipment" not controlled by USML Category XIII(k) "specially designed" for the "production," "development," repair, overhaul, or refurbishing of commodities enumerated in ECCN 0A617, (except for 0A617.y) or USML Category XIII, and "parts," "components," "accessories," and "attachments" "specially designed" therefor.
b. [RESERVED].

Note: *Field engineer equipment "specially designed" for use in a combat zone, identified in the Wassenaar Arrangement Munitions List 17.d, and mobile repair shops "specially designed" or modified to service military equipment, identified in Wassenaar Arrangement Munitions List 17.j, are controlled by 0B617 to the extent that the items are not included in USML Category XIII(k).*

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add new ECCNs 0C606 and 0C617 after ECCN 0C521 to read as follows:

0C606 Materials "specially designed" for commodities controlled by ECCN 0A606 not elsewhere specified in the USML (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0C606.

List of Items Controlled

Unit: $ value
Related Controls: (1) Materials that are subject to the jurisdiction of the ITAR are described in USML Category XIII. (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.
Related Definitions: N/A
Items: Materials "specially designed" for commodities enumerated in ECCN 0A606 (other than 0A606.b or 0A606.y) or USML Category VII, not elsewhere specified in the USML or the CCL.

Note: *Materials "specially designed" for both ground vehicles enumerated in USML Category VII and ground vehicles enumerated in ECCN 0A606 are subject to the controls of this ECCN unless identified in USML Category VII(g) as being subject to the controls of that paragraph.*

0C617 Miscellaneous Materials "Specially Designed" for Military Use (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0C617.

List of Items Controlled

Unit: $ value.
Related Controls: (1) For controls on other signature suppression materials, see USML Category XIII and ECCNs 1C001 and 1C101. (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.
Related Definitions: N/A
Items:
a. Materials, coatings and treatments for signature suppression, "specially designed" for military use to reduce detectability or observability and that are not controlled by USML Category XIII or ECCNs 1C001 or 1C101.
b. [RESERVED].

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add new ECCNs 0D606 and 0D617 after 0D521 to read as follows:

0D606 "Software" "specially designed" for the "development," "production," operation, or maintenance of ground vehicles and related commodities controlled by 0A606, 0B606, or 0C606 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 0D606.y.	NS Column 1
RS applies to entire entry, except 0D606.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0D606.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A
TSR: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any software in 0D606.

List of Items Controlled

Unit: $ value.
Related Controls: (1) Software directly related to articles enumerated in USML Category VII are subject to the controls of USML paragraph VII(h). (2) See ECCN 0A919 for foreign made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.
Related Definitions: N/A
Items:
a. "Software" "specially designed" for the "development," "production," operation, or maintenance of commodities controlled by ECCN 0A606 (except for ECCNs 0A606.b or 0A606.y).
b. through x. [RESERVED]
y. Specific "software" "specially designed" for the "production," "development," operation, or maintenance of commodities enumerated in ECCN 0A606.y.

0D617 "Software" "specially designed" for the "development," "production,"

operation, or maintenance of commodities controlled by 0A617, "equipment" controlled by 0B617, or materials controlled by 0C617 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 0D617.y.	NS Column 1
RS applies to entire entry, except 0D617.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0D617.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A
TSR: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any "software" in 0D617.

List of Items Controlled

Unit: $ value.
Related Controls: (1) "Software" directly related to articles controlled by USML Category XIII is subject to the control of USML paragraph XIII(l). (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.
Related Definitions: N/A
Items:
a. "Software" (other than "software" controlled in paragraph .y of this entry) "specially designed" for the "development," "production," operation or maintenance of commodities controlled by ECCNs 0A617 (except 0A617.y), 0B617, or 0C617.
b. to x. [RESERVED].
y. Specific "software" "specially designed" for the "production," "development," operation or maintenance of commodities controlled by ECCN 0A617.y.

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]—ECCN 0E018 is amended by adding a note at the end of the entry to read as follows:

0E018 "Technology" for the "development," "production," or "use" of items controlled by 0A018.

* * * * *

Note: *This ECCN no longer controls "technology" for items formerly controlled by 0A018.a See ECCN 0A617.y.1 and.y.1.a for items formerly controlled by 0A018.a and see the "technology" controls for those items in ECCN 0E617.y.*

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items] add new ECCNs 0E606 and 0E617 between ECCNs 0E521 and 0E918 to read as follows:

0E606 "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of ground vehicles and related commodities in 0A606, 0B606, 0C606, or software in 0D606 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 0E606.y.	NS Column 1
RS applies to entire entry, except 0E606.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0E606.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A
TSR: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 0D606.

List of Items Controlled

Unit: N/A
Related Controls: Technical data directly related to articles enumerated in USML Category VII are subject to the controls of USML paragraph VII(h).
Related Definitions: N/A
Items:
a. "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities enumerated in ECCN 0A606 (except for ECCNs 0A606.b or 0A606.y).
b. through x. [RESERVED]
y. Specific "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities or software in ECCN 0A606.y or 0D606.y.

0E617 "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 0A617, "equipment controlled by 0B617, or materials controlled by 0C617, or "software" controlled by ECCN 0D617 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 0E617.y.	NS Column 1
RS applies to entire entry, except 0E617.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0E617.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A
TSR: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 0E617.

List of Items Controlled

Unit: $ value.
Related Controls: Technical data directly related to articles controlled by USML Category XIII are subject to the control of USML paragraph XIII(*l*).
Related Definitions: N/A
Items:
a. "Technology" (other than "technology" controlled by paragraph .y of this entry) "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or "software" controlled by ECCN 0A617 (except 0A617.y), 0B617, 0C617, or 0D617 (except 0D617.y).
b. through x. [RESERVED].
y. Specific "technology" "required" for the "production," "development," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 0A617.y or "software" controlled by 0D617.y.

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, ECCN 8A018 is revised to read as follows:

8A018 Items on the Wassenaar Arrangement Munitions List.

No items currently are in this ECCN. See ECCN 8A609 for engines and propulsion systems and specially designed components therefor that, immediately prior to January 6, 2014, were classified under ECCN 8A018.b.3. See ECCN 8A620 for closed and semi-closed circuit (rebreathing) apparatus, engines and propulsion systems for submersible vessels (diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over "specially designed" for submarines), submarine and torpedo nets, and specially designed components therefor that, immediately prior to January 6, 2014, were classified under ECCN 8A018.a, .b.1, or .b.4, respectively. See ECCNs 8A001, 8A002 and 8A992 for controls on non-military submersible vehicles, oceanographic and associated equipment. See USML Category XX (22 CFR part 121) for electric motors specially designed for submarines that, immediately prior to

January 6, 2014, were classified under ECCN 8A018.b.2.

■ 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add new ECCNs 8A609 and 8A620 between ECCNs 8A018 and 8A918 to read as follows:

8A609 Surface vessels of war and related commodities (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 8A609.y.	NS Column 1
RS applies to entire entry, except 8A609.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8A609.y.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 8A609.a, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for "600 series" end items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 8A609.

List of Items Controlled

Unit: Equipment or "end items" in number; "parts," "components," "accessories" and "attachments" in $ value.
Related Controls: (1) Surface vessels of war and special naval equipment, and technical data (including software), and services directly related thereto, described in 22 CFR part 121. Category VI, Surface Vessels of War and Special Naval Equipment, are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content. (3) For controls on diesel engines and electric motors for surface vessels of war subject to the EAR, see ECCN 8A992.g. (4) For controls on military gas turbine engines and related items for vessels of war, see ECCN 9A619.
Related Definitions: N/A
Items:

a. Surface vessels of war "specially designed" for a military use and not enumerated in the USML.

Note 1: *8A609.a includes: (i) Underway replenishment ships; (ii) surface vessel and submarine tender and repair ships, except vessels that are "specially designed" to support naval nuclear propulsion plants; (iii) non-submersible submarine rescue ships; (iv) other auxiliaries (e.g., AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, and AVT); (v) amphibious warfare craft, except those that are armed; and (vi) unarmored and unarmed coastal, patrol, roadstead, and Coast Guard and other patrol craft with mounts or hard points for firearms of .50 caliber or less.*

Note 2: *For purposes of paragraph .a, surface vessels of war includes vessels "specially designed" for military use that are not identified in paragraph (a) of ITAR § 121.15, including any demilitarized vessels, regardless of origin or designation, manufactured prior to 1950 and that have not been modified since 1949. For purposes of this note, the term modified does not include incorporation of safety features required by law, cosmetic changes (e.g., different paint), or the addition of "parts" or "components" available prior to 1950.*

b. Non-magnetic diesel engines with a power output of 50 hp or more and either of the following:

b.1. Non-magnetic content exceeding 25% of total weight; *or*

b.2. Non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines.

c. through w. [RESERVED]

x. "Parts," "components," "accessories" and "attachments" that are "specially designed" for a commodity enumerated in ECCN 8A609 (except for 8A609.y) *or* a defense article enumerated in USML Category VI and not specified elsewhere on the USML or in 8A609.y.

Note 1: *Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 8A609.x are controlled by ECCN 8A609.x.*

Note 2: *"Parts," "components," "accessories" and "attachments" specified in USML subcategory VI(f) are subject to the controls of that paragraph. "Parts," "components," "accessories," and "attachments" specified in ECCN 8A609.y are subject to the controls of that paragraph.*

y. Specific "parts," "components," "accessories" and "attachments" "specially designed" for a commodity subject to control in this ECCN or for a defense article in USML Category VI and not elsewhere specified in the USML, as follows:

y.1. Public address (PA) systems;
y.2. Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems;
y.3. Galleys;
y.4. Lavatories;
y.5. Magnetic compass, magnetic azimuth detector;
y.6. Medical facilities;
y.7. Potable water tanks, filters, valves, hoses, lines, fittings, couplings, and brackets;
y.8. Panel knobs, indicators, switches, buttons, and dials whether unfiltered or filtered for use with night vision imaging systems;;
y.9. Emergency lighting;
y.10. Gauges and indicators;
y.11. Audio selector panels.

8A620 Submersible vessels, oceanographic and associated commodities (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 8A620. b and .y.	NS Column 1
RS applies to entire entry, except 8A620.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8A620.y.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 8A620.a or .b, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for "600 series" end items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 8A620.

List of Items Controlled

Unit: Equipment in number; "parts," "components," "accessories" and "attachments" in $ value.
Related Controls: (1) Submersible vessels, oceanographic and associated equipment, and technical data (including software), and services directly related thereto, described in 22 CFR part 121, Category XX, Submersible Vessels, Oceanographic and Associated Equipment, are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). "Parts," "components," "accessories," and "attachments" "specially designed" for defense articles in USML Category XX are controlled under USML sub-category XX(c). (2) See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content. (3) For controls on non-military submersible vehicles, oceanographic and associated equipment, see ECCNs 8A001, 8A002, and 8A992. (4) See ECCN 8A609 for controls on non-magnetic diesel engines with a power output of 50 hp or more and either: (i) non-magnetic content exceeding 25% of total weight; or (ii) non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines.

Related Definitions: N/A
Items:

a. Submersible and semi-submersible vessels "specially designed" for a military use and not enumerated in the USML.

Note: *8A620.a includes submarine rescue vehicles and Deep Submergence Vehicles (DSV).*

b. Submersible and semi-submersible vessels "specially designed" for cargo transport and "parts," "components," "accessories," and "attachments" "specially designed" therefor.

c. Harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor, not elsewhere specified on the USML or the CCL.

d. Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over "specially designed" for submarines.

Note: *Propulsion systems not specified in ECCN 8A620.d that are "specially designed" for an article controlled by USML Category XX are controlled by USML XX(b) or (c).*

e. Submarine nets and torpedo nets.

f. Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use and not enumerated elsewhere in the CCL or in the USML, and specially designed components for use in the conversion of open-circuit apparatus to military use.

g. through w. [RESERVED]

x. "Parts," "components," "accessories" and "attachments" that are "specially designed" for a commodity enumerated in ECCN 8A620 (except for 8A620.b or .y) and not specified elsewhere on the USML or in 8A620.y.

Note 1: *Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 8A620.x are controlled by ECCN 8A620.x.*

Note 2: *"Parts," "components," "accessories" and "attachments" specified in ECCN 8A620.y are subject to the controls of that paragraph.*

y. Specific "parts," "components," "accessories" and "attachments" "specially designed" for a commodity subject to control in this ECCN, as follows:

y.1. Public address (PA) systems;

y.2. Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems;

y.3. Galleys;

y.4. Lavatories;

y.5. Magnetic compass, magnetic azimuth detector;

y.6. Medical facilities;

y.7. Potable water tanks, filters, valves, hoses, lines, fittings, couplings, and brackets;

y.8. Panel knobs, indicators, switches, buttons, and dials whether unfiltered or filtered for use with night vision imaging systems;

y.9. Emergency lighting;

y.10. Gauges and indicators;

y.11. Audio selector panels.

■ 20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add new ECCNs 8B609 and 8B620 immediately following ECCN 8B001 to read as follows:

8B609 Test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A609 or USML Category VI (except for Cat VI(f)(7)), as follows.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 8B609.

List of Items Controlled

Unit: N/A
Related Controls: See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.
Related Definitions: N/A
Items:

a. Test, inspection, and production "equipment" "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A609 (except for 8A609.y) or in USML Category VI (except for USML Cat VI(f)(7)), and "parts," "components," "accessories" and "attachments" "specially designed" therefor.

b. [RESERVED]

8B620 Test, inspection, and production "equipment" and related commodities "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A620 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 8B620.b.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 8B620.

List of Items Controlled

Unit: N/A
Related Controls: See ECCN 0A919 for foreign-made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.
Related Definitions: N/A
Items:

a. Test, inspection, and production "equipment" "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A620 (except for 8A620.b and .y) and "parts," "components," "accessories" and "attachments" "specially designed" therefor.

b. Test, inspection, and production "equipment" "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities enumerated in ECCN 8A620.b and "parts," "components," "accessories" and "attachments" "specially designed" therefor.

■ 21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8C609 immediately following ECCN 8C001 to read as follows:

8C609 Materials "specially designed" for the "development" or "production" of commodities controlled by 8A609 not elsewhere specified in the USML.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

License Exceptions

LVS: $1500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 8C609.

List of Items Controlled

Unit: N/A
Related Controls: (1) See USML Categories VI and XIII(f) for controls on materials specially designed for vessels of war enumerated in USML Category VI. (2) See

ECCN 0A919 for foreign made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.
Related Definitions: N/A
Items:

a. Materials, not enumerated on the USML, that are "specially designed" for commodities enumerated in ECCN 8A609 (except for 8A609.y).

b. [RESERVED]

■ 22. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add new ECCNs 8D609 and 8D620 between ECCN 8D002 and 8D992 to read as follows:

8D609 "Software" "specially designed" for the "development," "production," operation or maintenance of commodities controlled by 8A609, 8B609, or 8C609 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 8D609.y.	NS Column 1
RS applies to entire entry, except 8D609.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8D609.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A
TSR: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any "software" in 8D609.

List of Items Controlled

Unit: $ value.
Related Controls: (1) "Software" directly related to articles enumerated in USML Category VI is controlled under USML Category VI(g). (2) See ECCN 0A919 for foreign made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.
Related Definitions: N/A
Items:

a. "Software" "specially designed" for the "development," "production," operation, or maintenance of commodities controlled by ECCN 8A609, ECCN 8B609, or ECCN 8C609 (except for commodities controlled by ECCN 8A609.y).

b. through .x [RESERVED]

y. Specific "software" "specially designed" for the "development," "production," operation, or maintenance of commodities in ECCN 8A609.y.

8D620 "Software" "specially designed" for the "development," "production," operation, or maintenance of commodities controlled by 8A620 or 8B620 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 8D620.b and .y.	NS Column 1
RS applies to entire entry, except 8D620.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8D620.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A
TSR: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any "software" in 8D620.

List of Items Controlled

Unit: $ value
Related Controls: (1) "Software" directly related to articles enumerated in USML Category XX is controlled under USML Category XX(d). (2) See ECCN 0A919 for foreign made "military commodities" that incorporate more than a *de minimis* amount of U.S.-origin "600 series" controlled content.
Related Definitions: N/A
Items:

a. "Software" "specially designed" for the "development," "production," operation, or maintenance of commodities controlled by ECCN 8A620 or ECCN 8B620 (except for commodities controlled by ECCN 8A620.b or .y or ECCN 8B620.b).

b. "Software" "specially designed" for the "development," "production," operation, or maintenance of commodities controlled by ECCN 8A620.b or ECCN 8B620.b.

c. through .x [RESERVED]

y. Specific "software" "specially designed" for the "development," "production," operation, or maintenance of commodities in ECCN 8A620.y.

■ 23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add new ECCNs 8E609 and 8E620 between ECCN 8E002 and 8E992 to read as follows:

8E609 "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 8A609, 8B609, or 8C609, or "software" controlled by 8D609 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT. UN

Control(s)	*Country chart*
NS applies to entire entry, except 8E609.y.	NS Column 1
RS applies to entire entry, except 8E609.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8E609.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A
TSR: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any "technology" in 8E609.

List of Items Controlled

Unit: N/A
Related Controls: Technical data directly related to articles enumerated in USML Category VI are controlled under USML Category VI(g).
Related Definitions: N/A
Items:

a. "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A609, 8B609, or 8C609 (except for commodities controlled by ECCN 8A609.y), or "software" controlled by ECCN 8D609.

b. through .x [RESERVED]

y. Specific "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software in ECCN 8A609.y or 8D609.y.

8E620 "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 8A620 or 8B620, or "software" controlled by 8D620 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart*
NS applies to entire entry, except 8E620.b and .y.	NS Column 1
RS applies to entire entry, except 8E620.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8E620.y.	See § 746.1(b) for UN controls

License Exceptions

CIV: N/A
TSR: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any "technology" in 8E620.

List of Items Controlled

Unit: N/A
Related Controls: Technical data directly related to articles enumerated in USML Category XX are controlled under USML Category XX(d).

Related Definitions: N/A
Items:

a. "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A620 or 8B620 or "software" controlled by ECCN 8D620 (except for commodities controlled by ECCN 8A620.b or .y or ECCN 8B620.b or "software" controlled by 8D620.b or .y).

b. "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A620.b or 8B620.b or "software" controlled by ECCN 8D620.b.

c. through .x [RESERVED]

y. Specific "technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul or refurbishing of commodities or software in ECCN 8A620.y or 8D620.y.

■ 24. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9A018 is revised to read as follows:

9A018 Equipment on the Wassenaar Arrangement Munitions List.

(a) See ECCN 9A610 for the aircraft, refuelers, ground equipment, parachutes, harnesses, and instrument flight trainers, as well as "parts", "accessories," and "attachments" for the forgoing that, immediately prior to October 15, 2013, were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f.

(b) See ECCN 9A619 for military trainer aircraft turbo prop engines and "parts" and "components" therefor that, immediately prior to October 15, 2013, were classified under ECCN 9A018.a.2 or .a.3.

(c) See ECCN 0A606.b for certain armored ground transport vehicles that prior to January 6, 2014 were classified under ECCN 9A018.b.

■ 25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9A619, the Note at the end of paragraph .a in the Items paragraph of the List of Items Controlled section is revised to read as follows:

9A619 Military gas turbine engines and related commodities.

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

Note: *For purposes of ECCN 9A619.a, the term "military gas turbine engines" means gas turbine engines "specially designed" for "end items" enumerated in USML Categories VI, VII or VIII or on the CCL under ECCNs 0A606, 8A609 or 9A610.*

* * * * *

■ 26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9D018 is revised to read as follows:

9D018 "Software" for the "use" of equipment controlled by 9A018.

(a) See ECCN 9D610 for "software" related to aircraft, refuelers, ground equipment, parachutes, harnesses, instrument flight trainers and "parts", "accessories," and "attachments" for the forgoing that, immediately prior to October 15, 2013, were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f.

(b) See ECCN 9D619 for "software" related to military trainer aircraft turbo prop engines and "parts" and "components" therefor that, immediately prior to October 15, 2013, were classified under ECCN 9A018.a.2 or .a.3.

(c) Software related to certain armored ground transport vehicles that prior to January 6, 2014 were classified under ECCN 9A018.b is EAR99 (See 0D606).

■ 27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9E018 is revised to read as follows:

9E018 "Technology" for the "development," "production," or "use" of equipment controlled by 9A018.

(a) See ECCN 9E610 for "technology" related to aircraft, refuelers, ground equipment, parachutes, harnesses, instrument flight trainers and "parts", "accessories" and "attachments" for the forgoing that, immediately prior to October 15, 2013, were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f.

(b) See ECCN 9E619 for "technology" related to military trainer aircraft turbo prop engines and "parts" and "components" therefor that, immediately prior to October 15, 2013, were classified under ECCN 9A018.a.2 or .a.3.

(c) Technology related to certain armored ground transport vehicles that prior to January 6, 2014 were classified under ECCN 9A018.b is EAR99 (See 0E606).

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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Part IV

Department of State

22 CFR 120, 121, 123, et al.
Amendment to the International Traffic in Arms Regulations: Continued Implementation of Export Control Reform; Final Rule

DEPARTMENT OF STATE

22 CFR 120, 121, 123, 124, and 125

[Public Notice 8370]

RIN 1400–AD40

Amendment to the International Traffic in Arms Regulations: Continued Implementation of Export Control Reform

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: As part of the President's Export Control Reform (ECR) effort, the Department of State is amending the International Traffic in Arms Regulations (ITAR) to revise four more U.S Munitions List (USML) categories and provide new definitions and other changes. The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563.

DATES: This rule is effective January 6, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah J. Heidema, Acting Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2809; email *DDTCResponseTeam@state.gov*. ATTN: Regulatory Change, Second ECR Final Rule. The Department of State's full retrospective plan can be accessed at *http://www.state.gov/documents/organization/181028.pdf*.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.*, "defense articles" and "defense services," are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations ("EAR," 15 CFR parts 730–774, which includes the Commerce Control List (CCL) in Supplement No. 1 to part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports, reexports, and retransfers. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

All references to the USML in this rule are to the list of defense articles controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations. *See* 27 CFR part 447. Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for the purpose of permanent import is the U.S. Munitions Import List (USMIL). The transfer of defense articles from the ITAR's USML to the EAR's CCL for the purpose of export control does not affect the list of defense articles controlled on the USMIL under the AECA for the purpose of permanent import.

Export Control Reform Update

Pursuant to the President's Export Control Reform (ECR) initiative, the Department has published proposed revisions to twelve USML categories and has revised four USML categories to create a more positive control list and eliminate where possible "catch all" controls. The Department, along with the Departments of Commerce and Defense, reviewed the public comments the Department received on the proposed rules and has, where appropriate, revised the rules. A discussion of the comments relevant to the USML categories that are part of this rule is included later on in this notice. The Department continues to review the remaining USML categories and will publish them as proposed rules in the coming months.

For discussion of public comments relevant to the two USML categories that have been published as final rules, please *see*, "Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform," published April 16, 2013 (78 FR 22740). The aforementioned notice also contains policies and procedures regarding the licensing of items moving from the export jurisdiction of the Department of State to the Department of Commerce, a definition for specially designed, and responses to public comments and changes to other sections of the ITAR that affect the categories discussed in this rule.

Pursuant to ECR, the Department of Commerce has been publishing revisions to the EAR, including various revisions to the CCL. Revision of the USML and CCL are coordinated so there is uninterrupted regulatory coverage for items moving from the jurisdiction of the Department of State to that of the Department of Commerce. For the Department of Commerce's companion to this rule, please *see*, "Revisions to the Export Administration Regulations: Military Vehicles; Vessels of War; Submersible Vessels, Oceanographic Equipment; Related Items; and Auxiliary and Miscellaneous Items that the President Determines No Longer Warrant Control under the United States Munitions List," elsewhere in this edition of the **Federal Register**.

Changes in This Rule

The following changes are made to the ITAR with this final rule: (i) Revision of U.S. Munitions List (USML) Categories VI (Surface Vessels of War and Special Naval Equipment), VII (Ground Vehicles), XIII (Materials and Miscellaneous Articles), and XX (Submersible Vessels and Related Articles); (ii) addition of ITAR § 121.4 to provide a definition for "ground vehicles," ITAR § 121.14 to provide a definition for "submersible vessels," and ITAR § 120.38 to provide definitions of "organizational-level maintenance," "intermediate-level maintenance," and "depot-level maintenance"; (iii) revision of the definition of "surface vessels of war" at ITAR § 121.15; (iv) continued implementation of a new licensing procedure for the export of items subject to the EAR that are to be exported with defense articles; and (v) related changes to other ITAR sections.

Revision of USML Category VI

This final rule revises USML Category VI, covering surface vessels of war and special naval equipment, to establish a clearer line between the USML and the CCL regarding controls for these articles.

The revision narrows the types of surface vessels of war and special naval equipment controlled on the USML to only those that warrant control under the requirements of the AECA. It removes from USML control harbor entrance detection devices formerly controlled under USML Category VI(d) and no longer includes submarines, which are now controlled in USML Category XX. In addition, articles common to the Missile Technology Control Regime (MTCR) Annex and articles in this category are identified with the parenthetical "(MT)" at the end of each section containing such articles.

The revised USML Category VI does not contain controls on all generic parts, components, accessories, and attachments specifically designed or modified for a defense article, regardless of their significance to maintaining a military advantage for the United States. Rather, it contains a positive list of specific types of parts, components, accessories, and attachments that continue to warrant control on the

USML. All other parts, components, accessories, and attachments are subject to the new 600 series controls in Category 8 of the CCL, published separately by the Department of Commerce (*see* elsewhere in this issue of the **Federal Register**).

A new "(x) paragraph" has been added to USML Category VI, allowing ITAR licensing for commodities, software, and technical data subject to the EAR provided those commodities, software, and technical data are to be used in or with defense articles controlled in USML Category VI *and* are described in the purchase documentation submitted with the application.

This rule also revises ITAR § 121.15 to more clearly define "surface vessels of war" for purposes of the revised USML Category VI.

This revision of USML Category VI was first published as a proposed rule (RIN 1400–AC99) on December 23, 2011, for public comment (*see* 76 FR 80302). The comment period ended February 6, 2012. Nine parties filed comments recommending changes, which were reviewed and considered by the Department and other agencies. The Department's evaluation of the written comments and recommendations follows.

The Department received proposals for alternative phrasing of the regulatory text in USML Category VI and ITAR § 121.15. When the recommended changes added to the clarity of the regulation and were congruent with ECR objectives, the Department accepted them.

Two commenting parties recommended changing the criteria for USML control for articles developed as a result of funding from the Department of Defense. While the Department agrees that "mere" funding by the Department of Defense should not automatically designate a resulting article as a defense article, the Department also notes that, generally, the Department of Defense's interest is in developing defense articles. However, the Department has revised paragraph (c) to clarify that the control does not apply to developmental vessels identified in the relevant Department of Defense contract as being developed for both civil and military applications. Additionally, in response to public comments, the Department has inserted a delayed effective date for this and other developmental article controls so that it would not affect contracts or other funding authorizations now in effect. The controls would thus apply prospectively and only after the affected community has a sufficient opportunity to review and, as necessary, modify standard contract or funding authorization terms and conditions. The Department did not accept the recommendation of another party to limit the coverage of parts, components, accessories, and attachments in paragraph (c) to those listed in paragraph (f), as this would narrow the coverage in a manner unintended by the Department. The Department notes that this response also applies to comments received on this matter in the context of other USML categories and provisions of the ITAR (*e.g.*, USML Category XX and ITAR § 121.14, elsewhere in this rule).

Three commenting parties recommended the Department address and correct for any unintended consequences in revised ITAR § 121.15(a)(6) providing for the control of surface vessels of war that incorporate USML-controlled mission systems, a provision that may control vessels the Department intends for the transfer of export jurisdiction to the Department of Commerce. While the issue of the control of USML items in 600 series end-items will be addressed in a future policy statement, the Department has revised the definition of "mission systems" to include only those "systems" that are defense articles. The Department notes that this response also applies to comments received on this matter in the context of other USML categories and provisions of the ITAR (*e.g.*, USML Category XX and ITAR § 121.14, elsewhere in this rule).

One commenting party recommended clarifying the regulation to not control decommissioned and demilitarized surface vessels of war manufactured prior to a certain date to avoid controlling "historic" vessels, such as the U.S.S. Constitution. The Department has accepted this recommendation in part, and has noted in ITAR § 121.15 that demilitarized surface vessels of war manufactured prior to 1950 are not subject to the USML. Decommissioned vessels may retain their military capabilities, and therefore are not excluded from USML control on that basis.

In response to one commenting party's recommendation, the Department has clarified that "hulls" and "superstructures" include "support structures." The Department notes that unformed steel plating would be controlled based on the control of the material itself (*see* USML Category XIII, Materials and Miscellaneous Articles, elsewhere in this rule).

One commenting party recommended clarification of the 12.5% or greater damage threshold for hulls or superstructures. The damage threshold is a measurement based on length between perpendiculars (LBP). The LBP is a standard naval architecture term of reference that refers to the length of a vessel along the waterline from the forward surface of the stem, or main bow perpendicular member, to the after surface of the sternpost, or main stern perpendicular member. The regulation covers vessels that are specially designed to survive damage defined by a shell opening centered at any point along the hull where the longitudinal extent of the shell opening is equivalent to 12.5% of LBP or greater.

Revision of USML Category VII

This final rule revises USML Category VII, covering ground vehicles, to more accurately describe the articles within the category and to establish a clearer line between the USML and the CCL regarding controls over these articles. The revision narrows the types of ground vehicles controlled on the USML to only those that warrant control under the requirements of the AECA. Changes include the removal of most unarmored and unarmed military vehicles, trucks, trailers, and trains (unless specially designed as firing platforms for weapons above .50 caliber), and armored vehicles (either unarmed or with inoperable weapons) manufactured before 1956. Engines formerly controlled in paragraph (f) are now covered in revised USML Category XIX, published April 16, 2013 (*see* 78 FR 22740) or subject to the EAR in ECCN 0A606 (*see* 78 FR 22660). In addition, articles common to the MTCR Annex and articles in this category are identified with the parenthetical "(MT)" at the end of each section containing such articles.

A significant aspect of the revised USML Category VII is that it does not contain controls on all generic parts, components, accessories, and attachments that are specifically designed or modified for a defense article, regardless of their significance to maintaining a military advantage for the United States. Rather, it contains a positive list of specific types of parts, components, accessories, and attachments that continue to warrant control on the USML. All other parts, components, accessories, and attachments are subject to the new 600 series controls in Category 0 of the CCL (*see* the Department of Commerce rule elsewhere in this issue of the **Federal Register**).

A new "(x) paragraph" has been added to USML Category VII, allowing ITAR licensing for commodities, software, and technical data subject to the EAR provided those commodities,

software, and technical data are to be used in or with defense articles controlled in USML Category VII *and* are described in the purchase documentation submitted with the application.

This rule also establishes a definition for ground vehicles in ITAR § 121.4.

This revision of USML Category VII was published as a proposed rule (RIN 1400–AC77) on December 6, 2011, for public comment (*see* 76 FR 7611). The comment period ended January 20, 2012. Five parties filed comments recommending changes, which were thoroughly reviewed and considered by the Department and other agencies. The Department's evaluation of the written comments and recommendations follows.

The Department received proposals for alternative phrasing of the regulatory text in USML Category VII and ITAR § 121.4. When the recommended changes added to the clarity of the regulation and were congruent with ECR objectives, the Department accepted them.

One commenting party recommended providing an explanation of or reference for the phrase "rated class 60 or above" in paragraph (g)(9), to assist the exporter with interpretation. The Department notes there are numerous instances in the regulation where technical terminology is used. Such terminology is indispensible in the effort to provide a more descriptive and "positive" U.S. Munitions List. While the Department strives for simplicity and clarity in the regulation, and acknowledges that some of the terminology may be inscrutable to those without the proper knowledge base, the provision of layman's explanation of all technical parameters would make for a voluminous and unwieldy regulation.

One commenting party recommended revising paragraph (g)(11) to more specifically identify which kits should be controlled on the USML. The Department believes it has sufficiently described the articles meant to be controlled in that paragraph. For those in the public who disagree on the wording of a particular regulation because they believe it does not sufficiently describe the article to be controlled, the Department urges the submission of alternative text or criteria using the contact information in the "For Further Information" section. Any such comments will be evaluated for possible addition in a future rulemaking.

Revision of USML Category XIII

This final rule revises USML Category XIII, covering materials and miscellaneous articles, to more accurately describe the articles within the category and to establish a clearer line between the USML and the CCL regarding controls over these articles.

Paragraph (c) is removed and placed in reserve; the articles formerly controlled there (*i.e.*, self-contained diving and underwater breathing apparatus) are controlled in ECCN 8A620.f. Paragraphs (d), (e), (g), and (h) are reorganized and expanded to better describe the articles controlled therein. Paragraph (f) is re-designated to cover articles that are classified. The articles in the former paragraph (f) (*i.e.*, structural materials) are controlled in ECCN 0C617, revised USML Categories VI, VII, and VIII, and in paragraphs (d), (e), and new paragraph (f) of USML Category XIII. Paragraph (i) is re-designated to control signature reduction software, with embrittling agents (formerly controlled in paragraph (i)) moving to the CCL under ECCN 0A617.f. Paragraph (m) is amended to reflect the revisions made throughout this category. In addition, articles common to the MTCR Annex and articles in this category are identified with the parenthetical "(MT)" at the end of each section containing such articles.

A new "(x) paragraph" has been added to USML Category XIII, allowing ITAR licensing for commodities, software, and technical data subject to the EAR provided those commodities, software, and technical data are to be used in or with defense articles controlled in USML Category XIII *and* are described in the purchase documentation submitted with the application.

Although the articles controlled in paragraph (a) (*i.e.*, cameras and specialized processing equipment) are to controlled elsewhere on the USML and on the CCL, they will remain controlled in paragraph (a) until the Department publishes a final rule for USML Category XII and the Department of Commerce publishes its companion rule.

This revision of USML Category XIII was published as a proposed rule (RIN 1400–AD13) on May 18, 2012, for public comment (*see* 77 FR 29575). The comment period ended July 2, 2012. Ten parties filed comments recommending changes, which were reviewed and considered by the Department and other agencies. The Department's evaluation of the written comments and recommendations follows.

The Department received proposals for alternative phrasing of the regulatory text in USML Category XIII. When the recommended changes added to the clarity of the regulation and were congruent with ECR objectives, the Department accepted them.

One commenting party recommended removal of the phrase, "specially designed for military applications," from the introduction to paragraph (b) because an item should not be controlled on the USML merely because the military may be the first entity to purchase or use the item. The Department agrees that an item should not be considered a defense article based on first use by the military, and believes that appropriate application of the specially designed definition will work toward the preclusion of this occurrence. But the Department also notes that whether an item is specially designed for a military application and which sector (military or commercial) has established first purchases are two separate matters. Separately, the Department has accepted the recommendation to remove the phrase "specially designed for a military application" because it is superfluous.

One commenting party suggested that the parenthetical, "*e.g.*, command, control, and communications (C^3), and government intelligence applications," in the introduction to paragraph (b) is unnecessary, as the regulation lists, or should list, all articles to be controlled. The Department has removed the example, but has added "intelligence" as a description of the articles controlled in the paragraph.

Three commenting parties recommended the provision of specific criteria for discerning the threshold between military and non-military articles in paragraph (b). The Department acknowledges that the control of these items requires review, and that this aspect of the regulation requires further development, but at this point publishes the regulation largely as provided in the proposed rule.

The Department has revised paragraph (b)(4) by providing criteria to clarify the scope of the regulation, as recommended by two commenting parties.

In response to the recommendation of one commenting party for clarity of purpose in paragraph (d), the Department has removed the word "ablative" from the introduction.

Three commenting parties recommended that developmental armor funded by a Department of Defense contract should not be automatically controlled under the ITAR. The Department has qualified the regulation by stipulating that the USML does not control developmental armor determined to be subject to the EAR via a commodity jurisdiction determination

or identified in the relevant Department of Defense contract as being developed for both civil and military applications.

The Department accepted the recommendation of three commenting parties for identification of a lower-limit criterion for the provided parameter in paragraph (g)(1), and has revised the regulation accordingly.

Four commenting parties recommended control on the CCL as more appropriate for energy conversion devices controlled in paragraph (h). The Department has not accepted this recommendation, but has narrowed the control on thermionic generators covered in that paragraph.

The Department accepted the recommendation of five commenting parties to specifically indicate that the signature reduction software controlled in paragraph (i) be directly related to reducing the ability to detect a defense article, and has revised the regulation accordingly.

In response to the recommendation of one commenting party, laser eye-safe media will be controlled in revised USML Category X rather than in paragraph (j), and comments regarding the appropriate control criteria for those articles will be discussed in that rule.

Two commenting parties recommended deletion of paragraph (k), which controls certain tooling and equipment, saying it is unnecessary (because technical data controls elsewhere in the ITAR would cover the items) or too broad in scope (commercial items would be captured). The Department believes the regulation is appropriately phrased to control only the articles intended to be captured. In addition, the reason for the control goes beyond related technical data; the Department wants to control these items for their intended function. For these reasons, the Department did not accept the recommendation of another commenting party to transfer jurisdiction over these articles to the Department of Commerce.

One commenting party recommended the removal from paragraph (m) description of the term "electromagnetic armor," as it is not included in this category. The Department accepted this recommendation in part, and has included a note to USML Category VII(g)(6) to point to the definitions in USML Category XIII(m).

Revision of USML Category XX

This final rule revises USML Category XX, covering submersible vessels and related articles. The revision accounts for the movement of submarines from USML Category VI and consolidates the controls that apply to all submersible vessels in a single category. In addition, naval nuclear propulsion power plants for submersible vessels controlled under USML Category XX, formerly controlled under USML Category VI(e), are now controlled under USML Category XX(b). In addition, articles common to the MTCR Annex and articles in this category are identified with the parenthetical "(MT)" at the end of each section containing such articles.

Revised USML Category XX controls only those parts, components, accessories, and attachments that are specially designed for a defense article controlled therein. All other parts, components, accessories, and attachments become subject to the new 600 series controls in Category 8 of the CCL published separately by the Department of Commerce (*see* elsewhere in this issue of the **Federal Register**).

A new "(x) paragraph" has been added to USML Category XX, allowing ITAR licensing for commodities, software, and technical data subject to the EAR provided those commodities, software, and technical data are to be used in or with defense articles controlled in USML Category XX *and* are described in the purchase documentation submitted with the application.

This rule also creates ITAR § 121.14 to more clearly define "submersible vessels and related articles," and makes conforming edits to ITAR §§ 123.20, 124.2, and 125.1 (nuclear related controls).

This revision of USML Category XX was first published as a proposed rule (RIN 1400–AD01) on December 23, 2011, for public comment (*see* 76 FR 80305). The comment period ended February 6, 2012. Six parties filed comments recommending changes, which were reviewed and considered by the Department and other agencies. The Department's evaluation of the written comments and recommendations follows.

The Department received proposals for alternative phrasing of the regulatory text in USML Category XX and ITAR § 121.14. When the recommended changes added to the clarity of the regulation and were congruent with ECR objectives, the Department accepted them.

One commenting party recommended revising paragraph (c) to list the parts, components, accessories, attachments, and associated equipment controlled therein, rather than provide for the control of these articles that are specially designed for the articles in paragraphs (a) and (b) of USML Category XX. Because of the specialized and sensitive application of the articles controlled in USML Category XX, the Department did not enumerate the parts, components, accessories, attachments, and associated equipment for these articles.

Definition for Maintenance Levels

This final rule provides definitions for "organizational-level maintenance," "intermediate-level maintenance," and "depot-level maintenance."

These definitions were published for public comment on April 13, 2011, along with a proposed revision of the definition for "defense service" (RIN 1400–AC80, *see* 76 FR 20590. Revision of the defense service definition was the subject of another proposed rule. Please *see* 78 FR 31444). The comment period ended June 13, 2011. Thirty-nine parties filed comments recommending changes to the rule, which were reviewed and considered by the Department and other agencies. The Department's evaluation of the written comments and recommendations follows (the Department notes that comments bearing more on the definitions of defense service and public domain will be addressed in those respective rules).

Three commenting parties recommended that the definitions of maintenance levels proposed in ITAR § 120.38 should be replaced with the definitions already established by the Department of Defense in DoD Directive 4151.18, "Maintenance of Military Materiel," to avoid confusion and maintain consistency. While the Department did not accept this recommendation, it notes that the definitions are very similar. Certain differences among the two sets of definitions include a description of the types of maintenance services in the Department's definition for depot-level maintenance, and not providing for the manufacturing of unavailable parts in its definition for intermediate-level maintenance.

Nine commenting parties recommended revising the definitions to focus on the nature or complexity of the service performed or the specialized skills and knowledge required in the performance of the maintenance rather than specifying where and by whom the service is performed. The Department accepted this recommendation in part. While the Department believes the nature and complexity of the services are distinguished by the three levels, it was not the intent to limit who may provide the services or where they may be provided. The Department revised the definitions accordingly.

One commenting party recommended inclusion of the phrase, "enhancements that do not improve military capability

other than to enhance part life-cycle, reliability, or increase time between maintenance cycle checks," in all three defined maintenance levels, to reflect the fact that component improvement programs are common for hardware with long lifecycles. The Department accepted this comment and revised the definitions accordingly.

One commenting party recommended defining the terms "extensive equipment" and "higher technical skill," included in the definition for depot-level maintenance, as they are subjective. The Department accepted this recommendation in part. To minimize subjectivity, the Department replaced "extensive" with "necessary" and "higher technical" with "requisite."

One commenting party recommended removal of the phrase "assigned to the inventory of the end-user unit" in the definition of organizational-level maintenance because this would require the applicant to verify that equipment is in a foreign military inventory before performing the maintenance. The Department accepted this comment and has revised the definition accordingly.

Adoption of Proposed Rules and Other Changes

Having reviewed and evaluated the comments and recommended changes for the USML Category VI, USML Category VII, USML Category XIII, and USML Category XX proposed rules, and for the definition for maintenance levels, the Department has determined that it will, and hereby does, adopt them, with changes noted and other edits, and promulgates them in final form under this rule.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department has published this rule as separate proposed rules identified as 1400–AC77, 1400–AC80, 1400–AC99, 1400–AD01, and 1400–AD13, each with a 45- or 60-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will 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 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

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (the "Act"), a "major" rule is a rule that the Administrator of the OMB Office of Information and Regulatory Affairs finds has resulted or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) 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 foreign markets.

The Department does not believe this rulemaking will have an annual effect on the economy of $100,000,000 or more. Articles that are being removed from coverage in the U.S. Munitions List categories contained in this rule will still require licensing for export, but from the Department of Commerce. While the licensing regime of the Department of Commerce is more flexible than that of the Department of State, it is not expected that the change in jurisdiction of these articles will result in an export difference of $100,000,000 or more.

The Department also does not believe that this rulemaking will result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or have 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 foreign markets.

Executive Orders 12372 and 13132

This rulemaking 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 Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

Following is a listing of approved collections that will be affected by revision, pursuant to the President's Export Control Reform (ECR) initiative, of the U.S. Munitions List (USML) and the Commerce Control List. This final

rule continues the implementation of ECR. Other final rules will follow. The list of collections and the description of the manner in which they will be affected pertains to revision of the USML in its entirety, not only to the categories published in this rule:

(1) Statement of Registration, DS–2032, OMB No. 1405–0002. The Department estimates that between 3,000 and 5,000 of the currently-registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of between 6,000 and 10,000 hours annually, based on a revised time burden of two hours to complete a Statement of Registration.

(2) Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data, DSP–5, OMB No. 1405–0003. The Department estimates that there will be 35,000 fewer DSP–5 submissions annually following full revision of the USML. This would result in a burden reduction of 35,000 hours annually. In addition, the DSP–5 will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be exported.

(3) Application/License for Temporary Import of Unclassified Defense Articles, DSP–61, OMB No. 1405–0013. The Department estimates that there will be 200 fewer DSP–61 submissions annually following full revision of the USML. This would result in a burden reduction of 100 hours annually. In addition, the DSP–61 will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be temporarily imported.

(4) Application/License for Temporary Export of Unclassified Defense Articles, DSP–73, OMB No. 1405–0023. The Department estimates that there will be 800 fewer DSP–73 submissions annually following full revision of the USML. This would result in a burden reduction of 800 hours annually. In addition, the DSP–73 will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be temporarily exported.

(5) Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data, DSP–6, –62, –74, –119, OMB No. 1405–0092. The Department estimates that there will be 2,000 fewer amendment submissions annually following full revision of the USML. This would result in a burden reduction of 1,000 hours annually. In addition, the amendment forms will allow respondents to select USML Category XIX, a newly-established category, as a description of the articles that are the subject of the amendment request.

(6) Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements, DSP–5, OMB No. 1405–0093. The Department estimates that there will be 1,000 fewer agreement submissions annually following full revision of the USML. This would result in a burden reduction of 2,000 hours annually. In addition, the DSP–5, the form used for the purposes of electronically submitting agreements, will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be exported.

(7) Maintenance of Records by Registrants, OMB No. 1405–0111. The requirement to actively maintain records pursuant to provisions of the International Traffic in Arms Regulations (ITAR) will decline commensurate with the drop in the number of persons who will be required to register with the Department pursuant to the ITAR. As stated above, the Department estimates that between 3,000 and 5,000 of the currently-registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of between 60,000 and 100,000 hours annually. However, the ITAR does provide for the maintenance of records for a period of five years. Therefore, persons newly relieved of the requirement to register with the Department may still be required to maintain records.

(8) Export Declaration of Defense Technical Data or Services, DS–4071, OMB No. 1405–0157. The Department estimates that there will be 2,000 fewer declaration submissions annually following full revision of the USML. This would result in a burden reduction of 1,000 hours annually.

List of Subjects

22 CFR Parts 120, 121, and 125

Arms and munitions, Classified information, Exports.

22 CFR Part 123

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 121, 123, 124, and 125 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Sections 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. Section 120.38 is added to read as follows:

§ 120.38 Maintenance levels.

(a) *Organizational-level maintenance* (or basic-level maintenance) is the first level of maintenance that can be performed "on-equipment" (directly on the defense article or support equipment) without specialized training. It consists of repairing, inspecting, servicing, calibrating, lubricating, or adjusting equipment, as well as replacing minor parts, components, assemblies, and line-replaceable spares or units. This includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (*e.g.*, an increased mean time between failure (MTBF)) and does not enhance the basic performance or capability of the defense article.

(b) *Intermediate-level maintenance* is second-level maintenance performed "off-equipment" (on removed parts, components, or equipment) at or by designated maintenance shops or centers, tenders, or field teams. It may consist of calibrating, repairing, testing, or replacing damaged or unserviceable parts, components, or assemblies. This includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (*e.g.*, an increased mean time between failure (MTBF)) and does not enhance the basic performance or capability of the defense article.

(c) *Depot-level maintenance* is third-level maintenance performed on- or off-equipment at or by a major repair facility, shipyard, or field team, each with necessary equipment and personnel of requisite technical skill. It consists of providing evaluation or repair beyond unit or organization capability. This maintenance consists of inspecting, testing, calibrating, repairing, overhauling, refurbishing, reconditioning, and one-to-one replacing of any defective parts, components or assemblies. This

includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (*e.g.*, an increased mean time between failure (MTBF)) and does not enhance the basic performance or capability of the defense article.

PART 121—THE UNITED STATES MUNITIONS LIST

■ 3. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 4. Section 121.1 is amended by revising U.S. Munitions List Categories VI, VII, XIII, and XX to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VI—Surface Vessels of War and Special Naval Equipment

* (a) Warships and other combatant vessels (*see* § 121.15 of this subchapter).

(b) Other vessels not controlled in paragraph (a) of this category (*see* § 121.15 of this subchapter).

(c) Developmental vessels and specially designed parts, components, accessories, and attachments therefor funded by the Department of Defense via contract or other funding authorization.

Note 1 to paragraph (c): This paragraph does not control developmental vessels and specially designed parts, components, accessories, and attachments therefor (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (*see* § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (c): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (c): This provision is applicable to those contracts and funding authorizations that are dated one year or later following the publication of the rule, "Amendment to the International Traffic in Arms Regulations: Continued Implementation of Export Control Reform," RIN 140–AD40.

(d) [Reserved]

* (e) Naval nuclear propulsion plants and prototypes, and special facilities for construction, support, and maintenance therefor (*see* § 123.20 of this subchapter).

(f) Vessel and naval equipment, parts, components, accessories, attachments, associated equipment, and systems, as follows:

(1) Hulls or superstructures, including support structures therefor, that:

(i) Are specially designed for any vessels controlled in paragraph (a) of this category;

(ii) Have armor, active protection systems, or developmental armor systems; or

(iii) Are specially designed to survive 12.5% or greater damage across the length as measured between perpendiculars;

(2) Systems that manage, store, create, distribute, conserve, and transfer energy, and specially designed parts and components therefor, that have:

(i) Storage exceeding 30MJ;

(ii) A discharge rate less than 3 seconds; and

(iii) A cycle time under 45 seconds;

(3) Shipborne auxiliary systems for chemical, biological, radiological, and nuclear (CBRN) compartmentalization, over-pressurization and filtration systems, and specially designed parts and components therefor;

*(4) Control and monitoring systems for autonomous unmanned vessels capable of on-board, autonomous perception and decision-making necessary for the vessel to navigate while avoiding fixed and moving hazards, and obeying rules-of-the road without human intervention;

* (5) Any machinery, device, component, or equipment, including production, testing and inspection equipment, and tooling, specially designed for plants or facilities controlled in paragraph (e) of this section (*see* § 123.20 of this subchapter);

(6) Parts, components, accessories, attachments, and equipment specially designed for integration of articles controlled by USML Categories II, IV, or XVIII or catapults for launching aircraft or arresting gear for recovering aircraft (MT for launcher mechanisms specially designed for rockets, space launch vehicles, or missiles capable of achieving a range greater than or equal to 300 km);

Note to paragraph (f)(6): "Range" is the maximum distance that the specified rocket system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining range. The range for rocket systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For rocket systems, the range will be determined using the trajectory that maximizes range, assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind.

(7) Shipborne active protection systems (*i.e.*, defensive systems that actively detect and track incoming threats and launch a ballistic, explosive, energy, or electromagnetic countermeasure(s) to neutralize the threat prior to contact with a vessel) and specially designed parts and components therefor;

(8) Minesweeping and mine hunting equipment (including mine countermeasures equipment deployed by aircraft) and specially designed parts and components therefor; or

* (9) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information. "Classified" means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization.

Note 1 to paragraph (f): Parts, components, accessories, attachments, associated equipment, and systems specially designed for vessels enumerated in this category but not listed in paragraph (f) are subject to the EAR under ECCN 8A609.

Note 2 to paragraph (f): For controls related to ship signature management, *see* also USML Category XIII.

(g) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category and classified technical data directly related to items controlled in ECCNs 8A609, 8B609, 8C609, and 8D609 and defense services using the classified technical data. (MT for technical data and defense services related to articles designated as such.)

(*See* § 125.4 of this subchapter for exemptions.)

(h)–(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR (*see* § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technical data subject to the EAR (*see* § 123.1(b) of this subchapter).

Category VII—Ground Vehicles

* (a) Armored combat ground vehicles (*see* § 121.4 of this subchapter) as follows:

(1) Tanks; or

(2) Infantry fighting vehicles.

* (b) Ground vehicles (not enumerated in paragraph (a) of this category) and trailers that are armed or are specially designed to serve as a firing or launch platform (*see* § 121.4 of this subchapter) (MT if specially designed for rockets, space launch vehicles, missiles, drones, or unmanned aerial vehicles capable of delivering a payload of at least 500 kg to a range of at least 300 km).

(c) Ground vehicles and trailers equipped with any mission systems controlled under this subchapter (MT if specially designed for rockets, space launch vehicles, missiles, drones, or unmanned aerial vehicles capable of delivering a payload of at least 500 kg to a range of at least 300 km) (*see* § 121.4 of this subchapter).

Note to paragraphs (b) and (c): "Payload" is the total mass that can be carried or delivered by the specified rocket, space launch vehicle, missile, drone, or unmanned aerial vehicle that is not used to maintain flight. For definition of "range" as it pertains to aircraft systems, *see* note to paragraph (a) USML Category VIII. For definition of "range" as it pertains to rocket systems, *see* note to paragraph (f)(6) of USML Category VI.

(d) [Reserved]

* (e) Armored support ground vehicles (*see* § 121.4 of this subchapter).

(f) [Reserved]

(g) Ground vehicle parts, components, accessories, attachments, associated equipment, and systems as follows:

(1) Armored hulls, armored turrets, and turret rings;

(2) Active protection systems (*i.e.*, defensive systems that actively detect and track incoming threats and launch a ballistic, explosive, energy, or electromagnetic countermeasure(s) to neutralize the threat prior to contact with a vehicle) and specially designed parts and components therefor;

(3) Composite armor parts and components specially designed for the vehicles in this category;

(4) Spaced armor components and parts, including slat armor parts and components specially designed for the vehicles in this category;

(5) Reactive armor parts and components;

(6) Electromagnetic armor parts and components, including pulsed power specially designed parts and components therefor;

Note to paragraphs (g)(3)–(6): *See* USML Category XIII(m)(1)–(4) for interpretations which explain and amplify terms used in these paragraphs.

(7) Built in test equipment (BITE) to evaluate the condition of weapons or other mission systems for vehicles identified in this category, excluding equipment that provides diagnostics solely for a subsystem or component involved in the basic operation of the vehicle;

(8) Gun mount, stabilization, turret drive, and automatic elevating systems, and specially designed parts and components therefor;

(9) Self-launching bridge components rated class 60 or above for deployment by vehicles in this category;

(10) Suspension components as follows:

(i) Rotary shock absorbers specially designed for the vehicles weighing more than 30 tons in this category; or

(ii) Torsion bars specially designed for the vehicles weighing more than 50 tons in this category;

(11) Kits specially designed to convert a vehicle in this category into either an unmanned or a driver-optional vehicle. For a kit to be controlled by this paragraph, it must, at a minimum, include equipment for:

(i) Remote or autonomous steering;

(ii) Acceleration and braking; and

(iii) A control system;

(12) Fire control computers, mission computers, vehicle management computers, integrated core processers, stores management systems, armaments control processors, vehicle-weapon interface units and computers;

(13) Test or calibration equipment for the mission systems of the vehicles in this category, except those enumerated elsewhere; or

*(14) Any part, component, accessory, attachment, equipment, or system that (MT for those articles designated as such):

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

"Classified" means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization.

Note to paragraph (g): Parts, components, accessories, attachments, associated equipment, and systems specially designed for vehicles in this category but not listed in paragraph (g) are subject to the EAR under ECCN 0A606.

(h) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (g) of this category and classified technical data directly related to items controlled in ECCNs 0A606, 0B606, 0C606, and 0D606 and defense services using the classified technical data. (*See* § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(i)–(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR (*see* § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technical data subject to the EAR (*see* § 123.1(b) of this subchapter).

* * * * *

Category XIII— Materials and Miscellaneous Articles

(a) Cameras and specialized processing equipment therefor, photointerpretation, stereoscopic plotting, and photogrammetry equipment which are specifically designed, developed, modified, adapted, or configured for military purposes, and components specifically designed or modified therefor.

(b) Information security or information assurance systems and equipment, cryptographic devices, software, and components, as follows:

(1) Military or intelligence cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components, and software (including their cryptographic interfaces) capable of maintaining secrecy or confidentiality of information or information systems, including equipment or software for tracking, telemetry, and control (TT&C) encryption and decryption;

(2) Military or intelligence cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components, and software (including their cryptographic interfaces) capable of generating spreading or hopping codes for spread spectrum systems or equipment;

(3) Military or intelligence cryptanalytic systems, equipment, assemblies, modules, integrated circuits, components and software;

(4) Military or intelligence systems, equipment, assemblies, modules,

integrated circuits, components, or software (including all previous or derived versions) authorized to control access to or transfer data between different security domains as listed on the Unified Cross Domain Management Office (UCDMO) Control List (UCL); or

(5) Ancillary equipment specially designed for the articles in paragraphs (b)(1)–(b)(4) of this category.

(c) [Reserved]

(d) Materials, as follows:

*(1) Ablative materials fabricated or semi-fabricated from advanced composites (*e.g.*, silica, graphite, carbon, carbon/carbon, and boron filaments) specially designed for the articles in USML Category IV (MT if usable for nozzles, re-entry vehicles, nose tips, or nozzle flaps usable in rockets, space launch vehicles (SLVs), or missiles capable of achieving a range greater than or equal to 300 km); or

(2) Carbon/carbon billets and preforms that are reinforced with continuous unidirectional fibers, tows, tapes, or woven cloths in three or more dimensional planes (MT if designed for rocket, SLV, or missile systems and usable in rockets, SLVs, or missiles capable of achieving a range greater than or equal to 300 km).

Note to paragraph (d): "Range" is the maximum distance that the specified rocket system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining range. The range for rocket systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For rocket systems, the range will be determined using the trajectory that maximizes range, assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind.

Note to paragraph (d)(2): This paragraph does not control carbon/carbon billets and preforms where reinforcement in the third dimension is limited to interlocking of adjacent layers only.

(e) Armor (*e.g.*, organic, ceramic, metallic) and armor materials, as follows:

(1) Spaced armor with E_m greater than 1.4 and meeting NIJ Level III or better;

(2) Transparent armor having E_m greater than or equal to 1.3 or having E_m less than 1.3 and meeting and exceeding NIJ Level III standards with areal density less than or equal to 40 pounds per square foot;

(3) Transparent ceramic plate greater than ¼ inch-thick and larger than 8 inches x 8 inches, excluding glass, for transparent armor;

(4) Non-transparent ceramic plate or blanks, greater than ¼ inches thick and larger than 8 inches x 8 inches for transparent armor. This includes spinel and aluminum oxynitride (ALON);

(5) Composite armor with E_m greater than 1.4 and meeting or exceeding NIJ Level III;

(6) Metal laminate armor with E_m greater than 1.4 and meeting or exceeding NIJ Level III; or

(7) Developmental armor funded by the Department of Defense via contract or other funding authorization.

Note 1 to paragraph (e)(7): This paragraph does not control developmental armor (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (e)(7): Note 1 does not apply to defense articles enumerated on the USML, whether in production or development.

Note 3 to paragraph (e)(7): This provision is applicable to those contracts and funding authorizations that are dated one year or later following the publication of the rule, "Amendment to the International Traffic in Arms Regulations: Continued Implementation of Export Control Reform," RIN 140–AD40.

*(f) Any article enumerated in this category that (MT for those articles designated as such):

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

"Classified" means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization.

*(g) Concealment and deception equipment, as follows (MT for applications usable for rockets, SLVs, missiles, drones, or unmanned aerial vehicles (UAVs) capable of achieving a range greater than or equal to 300 km and their subsystems. *See* note to paragraph (d) of this category):

(1) Polymers loaded with carbonyl iron powder, ferrites, iron whiskers, fibers, flakes, or other magnetic additives having a surface resistivity of less than 5000 ohms/square and greater than 10 ohms/square with electrical isotropy of less than 5%;

(2) Multi-layer camouflage systems specially designed to reduce detection of platforms or equipment in the infrared or ultraviolet frequency spectrums;

(3) High temperature (greater than 300 °F operation) ceramic or magnetic radar absorbing material (RAM) specially designed for use on defense articles or military items subject to the EAR; or

(4) Broadband (greater than 30% bandwidth) lightweight (less than 2 lbs/sq ft) magnetic radar absorbing material (RAM) specially designed for use on defense articles or military items subject to the EAR.

(h) Energy conversion devices not otherwise enumerated in this subchapter, as follows:

(1) Fuel cells specially designed for platforms or soldier systems specified in this subchapter;

(2) Thermal engines specially designed for platforms or soldier systems specified in this subchapter;

(3) Thermal batteries (MT if designed or modified for rockets, SLVs, missiles, drones, or UAVs capable of achieving a range equal to or greater than 300 km. *See* note to paragraph (d) of this category); or

Note to paragraph (h)(3): Thermal batteries are single use batteries that contain a solid non-conducting inorganic salt as the electrolyte. These batteries incorporate a pyrolitic material that, when ignited, melts the electrolyte and activates the battery.

(4) Thermionic generators specially designed for platforms or soldier systems enumerated in this subchapter.

*(i) Signature reduction software, and technical data as follows (MT for software specially designed for reduced observables, for applications usable for rockets, SLVs, missiles, drones, or UAVs capable of achieving a range (*see* note to paragraph (d) of this category) greater than or equal to 300 km, and their subsystems, including software specially designed for analysis of signature reduction; MT for technical data for the development, production, or use of equipment, materials, or software designated as such, including databases specially designed for analysis of signature reduction):

(1) Software associated with the measurement or modification of system signatures for defense articles to reduce detectability or observability;

(2) Software for design of low-observable platforms;

(3) Software for design, analysis, prediction, or optimization of signature management solutions for defense articles;

(4) Infrared signature measurement or prediction software for defense articles

or radar cross section measurement or prediction software;

(5) Signature management technical data, including codes and algorithms for defense articles to reduce detectability or observability;

(6) Signature control design methodology (*see* § 125.4(c)(4) of this subchapter) for defense articles to reduce detectability or observability;

(7) Technical data for use of micro-encapsulation or micro-spheres to reduce infrared, radar, or visual detection of platforms or equipment;

(8) Multi-layer camouflage system technical data for reducing detection of platforms or equipment;

(9) Multi-spectral surface treatment technical data for modifying infrared, visual or radio frequency signatures of platforms or equipment;

(10) Technical data for modifying visual, electro-optical, radiofrequency, electric, magnetic, electromagnetic, or wake signatures (*e.g.*, low probability of intercept (LPI) techniques, methods or applications) of defense platforms or equipment through shaping, active, or passive techniques; or

(11) Technical data for modifying acoustic signatures of defense platforms or equipment through shaping, active, or passive techniques.

(j) Equipment, materials, coatings, and treatments not elsewhere specified, as follows:

(1) Specially treated or formulated dyes, coatings, and fabrics used in the design, manufacture, or production of personnel protective clothing, equipment, or face paints designed to protect against or reduce detection by radar, infrared, or other sensors at wavelengths greater than 900 nanometers (*see* USML Category X(a)(2)); or

*(2) Equipment, materials, coatings, and treatments that are specially designed to modify the electro-optical, radiofrequency, infrared, electric, laser, magnetic, electromagnetic, acoustic, electro-static, or wake signatures of defense articles or 600 series items subject to the EAR through control of absorption, reflection, or emission to reduce detectability or observability (MT for applications usable for rockets, SLVs, missiles, drones, or UAVs capable of achieving a range greater than or equal to 300 km, and their subsystems. *See* note to paragraph (d) of this category).

*(k) Tooling and equipment, as follows:

(1) Tooling and equipment specially designed for production of low observable (LO) components; or

(2) Portable platform signature field repair validation equipment (*e.g.*, portable optical interrogator that validates integrity of a repair to a signature reduction structure).

(l) Technical data (*see* § 120.10 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h), (j), and (k) of this category and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles enumerated in this category. (*See* also § 123.20 of this subchapter.) (MT for technical data and defense services related to articles designated as such.)

(m) The following interpretations explain and amplify terms used in this category and elsewhere in this subchapter:

(1) Composite armor is defined as having more than one layer of different materials or a matrix.

(2) Spaced armors are metallic or non-metallic armors that incorporate an air space or obliquity or discontinuous material path effects as part of the defeat mechanism.

(3) Reactive armor employs explosives, propellants, or other materials between plates for the purpose of enhancing plate motion during a ballistic event or otherwise defeating the penetrator.

(4) Electromagnetic armor (EMA) employs electricity to defeat threats such as shaped charges.

(5) Materials used in composite armor could include layers of metals, plastics, elastomers, fibers, glass, ceramics, ceramic-glass reinforced plastic laminates, encapsulated ceramics in a metallic or non-metallic matrix, functionally gradient ceramic-metal materials, or ceramic balls in a cast metal matrix.

(6) For this category, a material is considered transparent if it allows 75% or greater transmission of light, corrected for index of refraction, in the visible spectrum through a 1 mm thick nominal sample.

(7) The material controlled in paragraph (e)(4) of this category has not been treated to reach the 75% transmission level referenced in (m)(6) of this category.

(8) Metal laminate armors are two or more layers of metallic materials which are mechanically or adhesively bonded together to form an armor system.

(9) E_m is the line-of-sight target mass effectiveness ratio and provides a measure of the tested armor's performance to that of rolled homogenous armor, where E_m is defined as follows:

$$Em = \frac{\rho_{RHA}(Po - \mathrm{Pr})}{AD_{Target}}$$

Where:

ρ_{RHA} = density of RHA, (7.85 g/cm^3)
Po = Baseline Penetration of RHA, (mm)
Pr = Residual Line of Sight Penetration, either positive or negative (mm RHA equivalent)
AD_{TARGET} = Line-of-Sight Areal Density of Target (kg/m^2)

(10) NIJ is the National Institute of Justice and Level III refers to the requirements specified in NIJ standard 0108.01 Ballistic Resistant Protective Materials.

(n)–(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR (*see* § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technical data subject to the EAR (*see* § 123.1(b) of this subchapter).

* * * * *

Category XX—Submersible Vessels and Related Articles

(a) Submersible and semi-submersible vessels (*see* § 121.14 of this subchapter) that are:

*(1) Submarines;

(2) Mine countermeasure vehicles;

(3) Anti-submarine warfare vehicles;

(4) Armed;

(5) Swimmer delivery vehicles specially designed for the deployment, recovery, or support of swimmers or divers from submarines;

(6) Vessels equipped with any mission systems controlled under this subchapter; or

(7) Developmental vessels funded by the Department of Defense via contract or other funding authorization.

Note 1 to paragraph (a)(7): This paragraph does not control developmental vessels, and specially designed parts, components, accessories, attachments, and associated equipment therefor, (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (*see* § 120.4 of this subchapter) or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (a)(7): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (a)(7): This provision is applicable to those contracts and funding authorizations that are dated one year or later following the publication of the rule, "Amendment to the International Traffic in Arms Regulations: Continued

Implementation of Export Control Reform," RIN 140–AD40.

*(b) Engines, electric motors, and propulsion plants as follows:

(1) Naval nuclear propulsion plants and prototypes, and special facilities for construction, support, and maintenance therefor (*see* § 123.20 of this subchapter);

(2) Electric motors specially designed for submarines that have the following:

(i) Power output of more than 0.75 MW (1,000 hp);

(ii) Quick reversing;

(iii) Liquid cooled; and

(iv) Totally enclosed.

(c) Parts, components, accessories, attachments, and associated equipment, including production, testing, and inspection equipment and tooling, specially designed for any of the articles in paragraphs (a) and (b) of this category (MT for launcher mechanisms specially designed for rockets, space launch vehicles, or missiles capable of achieving a range greater than or equal to 300 km).

Note to paragraph (c): "Range" is the maximum distance that the specified rocket system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining range. The range for rocket systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For rocket systems, the range will be determined using the trajectory that maximizes range, assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind.

(d) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (MT for technical data and defense services related to articles designated as such.) (*See* § 125.4 of this subchapter for exemptions.)

(e)–(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR (*see* § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technical data subject to the EAR (*see* § 123.1(b) of this subchapter).

* * * * *

■ 5. Section 121.4 is added to read as follows:

§ 121.4 Ground vehicles.

(a) In USML Category VII, "ground vehicles" are those, whether manned or unmanned, that:

(1) Are armed or are specially designed to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (*e.g.*, firing lasers, launching rockets, firing missiles, firing mortars, firing artillery rounds, or firing other ammunition greater than .50 caliber);

(2) Are armored support vehicles capable of off-road or amphibious use specially designed to transport or deploy personnel or materiel, or to move with other vehicles over land in close support of combat vehicles or troops (*e.g.*, personnel carriers, resupply vehicles, combat engineer vehicles, recovery vehicles, reconnaissance vehicles, bridge launching vehicles, ambulances, and command and control vehicles); or

(3) Incorporate any "mission systems" controlled under this subchapter. "Mission systems" are defined as "systems" (*see* § 121.8(g) of this subchapter) that are defense articles that perform specific military functions, such as by providing military communication, target designation, surveillance, target detection, or sensor capabilities.

Note 1 to paragraph (a): Armored ground vehicles are (i) ground vehicles that have integrated, fully armored hulls or cabs, or (ii) ground vehicles on which add-on armor has been installed to provide ballistic protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better. Armored vehicles do not include those that are merely capable of being equipped with add-on armor.

Note 2 to paragraph (a): Ground vehicles include any vehicle meeting the definitions or control parameters regardless of the surface (*e.g.*, highway, off-road, rail) upon which the vehicle is designed to operate.

(b) Ground vehicles specially designed for military applications that are not identified in paragraph (a) of this section are subject to the EAR under ECCN 0A606, including any unarmed ground vehicles, regardless of origin or designation, manufactured prior to 1956 and unmodified since 1955. Modifications made to incorporate safety features required by law, are cosmetic (*e.g.*, different paint, repositioning of bolt holes), or that add parts or components otherwise available prior to 1956 are considered "unmodified" for the purposes of this paragraph. ECCN 0A606 also includes unarmed vehicles derived from otherwise EAR99 civilian vehicles that have been modified or otherwise fitted with materials to provide ballistic protection, including protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better and that do not have reactive or electromagnetic armor.

■ 6. Section 121.14 is added to read as follows:

§ 121.14 Submersible vessels.

(a) In USML Category XX, submersible and semi-submersible vessels are those, manned or unmanned, tethered or untethered, that:

(1) Are submarines specially designed for military use;

(2) Are armed or are specially designed to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (*e.g.*, firing torpedoes, launching rockets, firing missiles, deploying mines, deploying countermeasures) or deploy military payloads;

(3) Are specially designed for the deployment, recovery, or support of swimmers or divers from submarines;

(4) Are integrated with nuclear propulsion systems;

(5) Incorporate any "mission systems" controlled under this subchapter. "Mission systems" are defined as "systems" (*see* § 121.8(g) of this subchapter) that are defense articles that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities; or

(6) Are developmental vessels funded or contracted by the Department of Defense.

(b) Submersible and semi-submersible vessels that are not identified in paragraph (a) of this section are subject to the EAR under Category 8.

■ 7. Section 121.15 is revised to read as follows:

§ 121.15 Surface vessels of war.

(a) In USML Category VI, "surface vessels of war" are those, manned or unmanned, that:

(1) Are warships or other combatant vessels (battleships, aircraft carriers, destroyers, frigates, cruisers, corvettes, littoral combat ships, mine sweepers, mine hunters, mine countermeasure ships, dock landing ships, amphibious assault ships), or Coast Guard Cutters (with or equivalent to those with U.S. designations WHEC, WMEC, WMSL, or WPB for the purpose of this subchapter);

(2) Are foreign-origin vessels specially designed to provide functions equivalent to those of the vessels listed in paragraph (a)(1) of this section;

(3) Are high-speed air cushion vessels for transporting cargo and personnel,

ship-to-shore and across a beach, with a payload over 25 tons;

(4) Are surface vessels integrated with nuclear propulsion plants or specially designed to support naval nuclear propulsion plants;

(5) Are armed or are specially designed to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (*e.g.*, firing lasers, launching torpedoes, rockets, or missiles, or firing munitions greater than .50 caliber); or

(6) Incorporate any mission systems controlled under this subchapter. "Mission systems" are defined as "systems" (*see* § 121.8(g) of this subchapter) that are defense articles that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

(b) Vessels specially designed for military use that are not identified in paragraph (a) of this section are subject to the EAR under ECCN 8A609, including any demilitarized vessels, regardless of origin or designation, manufactured prior to 1950 and unmodified since 1949. Modifications made to incorporate safety features required by law, are cosmetic (*e.g.*, different paint), or that add parts or components otherwise available prior to 1950 are considered "unmodified" for the purposes of this paragraph.

PART 123—LICENSES FOR THE EXPORT AND TEMPORARY IMPORT OF DEFENSE ARTICLES

■ 8. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920, Sec 1205(a), Pub. L. 107–228; Sec. 520, Pub. L. 112–55; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 9. Section 123.20 is amended by revising paragraphs (a) and (c) introductory text to read as follows:

§ 123.20 Nuclear related controls.

(a) The provisions of this subchapter do not apply to equipment, technical data, or services in Category VI, Category XVI, and Category XX of § 121.1 of this subchapter to the extent such equipment, technical data, or services are under the export control of the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended, or is a government transfer authorized pursuant to these Acts.

* * * * *

(c) A license for the export of any machinery, device, component, equipment, or technical data relating to equipment referred to in Category VI(e) or Category XX(b) of § 121.1 of this subchapter will not be granted unless the proposed equipment comes within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the Atomic Energy Act of 1954, as amended, with the government of the country to which the Article is to be exported. Licenses may be granted in the absence of such an agreement only:

* * * * *

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT, AND OTHER DEFENSE SERVICES

■ 10. The authority citation for part 124 is revised to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 11. The heading for part 124 is revised to read as set forth above.

■ 12. Section 124.2 is amended by revising paragraphs (c)(5)(iv) and (xii) to read as follows:

§ 124.2 Exemptions for training and military service.

* * * * *

(c) * * *

(5) * * *

(iv) Naval nuclear propulsion equipment listed in USML Category VI and USML Category XX;

* * * * *

(xii) Submersible and semi-submersible vessels and related articles covered in USML Category XX; or

* * * * *

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

■ 13. The authority citation for part 125 is revised to read as follows:

Authority: Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

■ 14. Section 125.1 is amended by revising paragraph (e) to read as follows:

§ 125.1 Exports subject to this part.

* * * * *

(e) The provisions of this subchapter do not apply to technical data related to articles in Category VI(e), Category XVI, and Category XX(b) of § 121.1 of this subchapter. The export of such data is controlled by the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended.

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

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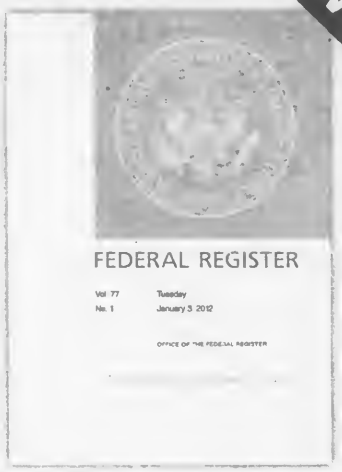

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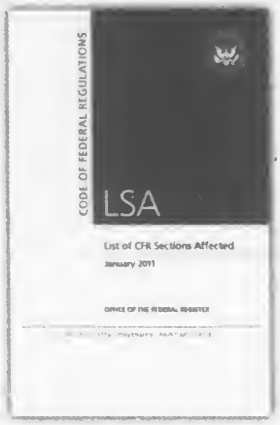

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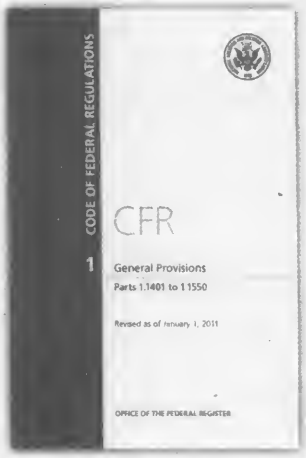

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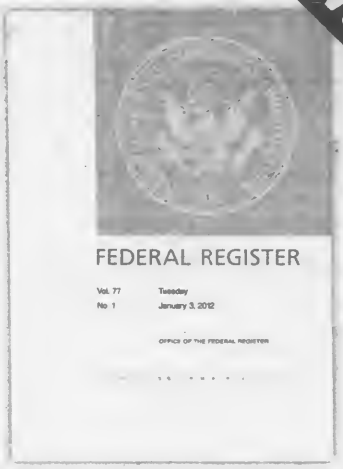

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