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OFFICE OF THE FEDERAL REGISTER

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WHEN: Tuesday, September 17, 2013
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS–FV–13–0009; FV13–905–2 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxing Size and Grade Requirements on Valencia and Other Late Type Oranges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that changed the size and grade requirements prescribed under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The interim rule reduced the minimum size for Valencia and other late type oranges shipped to interstate markets from 2$^{8}/_{16}$ inches to 2$^{4}/_{16}$ inches from May 15 through August 31 each season. The interim rule also lowered the minimum grade for Valencia and other late type oranges shipped to interstate markets from a U.S. No. 1 to a U.S. No. 1 Golden from May 15, 2013, to June 14, 2013, and to a U.S. No. 2 external/U.S. No. 1 internal from June 15, 2013, to August 31, 2013. This rule provides additional Valencia and other late type oranges for late season markets, helping to maximize fresh shipments.

DATES: Effective August 23, 2013.

FOR FURTHER INFORMATION CONTACT: Corey E. Elliott, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Corey.Elliott@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

The handling of oranges, grapefruit, tangerines, and tangelos grown in Florida is regulated by 7 CFR part 905. Prior to this change, the minimum size for Valencia and other late type oranges was 2$^{8}/_{16}$ inches in diameter. Also, prior to the change, the minimum grade was a U.S. No. 1 from August 1 to June 14 and a U.S. No. 2 external/U.S. No. 1 internal from June 15 to July 31. The industry believes there may be a late season market for Florida Valencia and other late type oranges in the food service industry. However, the previous size and grade regulations were making it difficult to supply this market.

Therefore, this rule continues in effect the interim rule published in the **Federal Register** on May 14, 2013, and effective on May 15, 2013, (78 FR 28115, Doc. No. AMS–FV–13–0009, FV13–905–2 IR) that reduced the minimum size for Valencia and other late type oranges shipped to interstate markets from 2$^{8}/_{16}$ inches to 2$^{4}/_{16}$ inches from May 15 through August 31 each season. It also lowered the minimum grade for Valencia and other late type oranges shipped to interstate markets from a U.S. No. 1 to a U.S. No. 1 Golden from May 15, 2013, to June 14, 2013, and to a U.S. No. 2 external/U.S. No. 1 internal from June 15, 2013, to August 31, 2013. These changes provide additional Valencia and other late type oranges for late season markets, helping to maximize fresh shipments. The characteristics of these grades are specified in the U.S. Standard for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179).

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 29 Valencia and other late type orange handlers subject to regulation under the marketing order and approximately 8,000 producers of citrus in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those whose annual receipts are less than $7,000,000, and small agricultural producers are defined as those having annual receipts less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average f.o.b. price for fresh Valencia and other late type oranges during the 2011–12 season was approximately $12.42 per $^{4}/_{5}$ bushel carton, and total fresh shipments were approximately 3.2 million cartons. Using the average f.o.b. price and shipment data, the majority of Florida Valencia and other late type orange handlers could be considered small businesses under SBA's definition. In addition, the average annual grower revenue is below $750,000 based on production data, grower prices as reported by NASS, and the total number of Florida citrus growers. Thus, assuming a normal distribution, the majority of Valencia and other late type

orange handlers and producers may be classified as small entities.

This rule continues in effect the changes that relaxed the size and grade requirements prescribed under the order. These changes allow additional late season fruit to be shipped to the fresh market, maximizing shipments and providing additional returns to both handlers and growers. This rule revises the provisions of section 905.306 by lowering the minimum size for interstate shipments of fresh Valencia and other late type oranges from 2⅝ inches to 2⅛ inches from May 15 to August 31 each season. This rule further revises section 905.306 by lowering the minimum grade for interstate shipments of Valencia and other late type oranges from a U.S. No. 1 to a U.S. No. 1 Golden from May 15, 2013, to June 14, 2013, and to a U.S. No. 2 external/U.S. No. 1 internal from June 15, 2013, to August 31, 2013. Authority for these changes is provided for in section 905.52.

This action does not impose any additional costs on the industry. However, it is anticipated that this action will have a beneficial impact. Relaxing size and grade requirements for Valencia and other late type oranges from May 15 to August 31 will make additional fruit available for shipment to the fresh market, providing the opportunity to supply the potential food service industry market. The Committee believes that relaxing the size and grade requirements provides an outlet for fruit that may otherwise go un-harvested. This action allows more fruit to be shipped to the fresh market and increases returns to both handlers and growers. The benefits of this rule are expected to be equally available to all fresh citrus growers and handlers, regardless of their size.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee meeting was widely publicized throughout the Florida citrus industry. All interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the January 8, 2013, meeting was a public meeting. All entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before July 15, 2013. One comment in favor of the action was received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0009-0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 28115, May 14, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

Accordingly, the interim rule that amended 7 CFR part 905, which was published at 78 FR 28115 on May 14, 2013, is adopted as a final rule, without change.

Dated: August 16, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20479 Filed 8–21–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[Document Number AMS–FV–13–0027]

Potato Research and Promotion Plan; Amend the Administrative Committee Structure and Delete the Board's Mailing Address

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the structure of the Administrative Committee (Committee) of the U.S. Potato Board (Board) and deletes the Board's mailing address from the Potato Research and Promotion Plan. The Plan is administered by the Board with oversight by the U.S. Department of Agriculture (USDA). Under the Plan, there are seven Committee Vice-Chairperson positions. The Board has recommended that these positions be increased to nine. This change is intended to facilitate increased involvement in the Board's leadership opportunities. Further, the Board's office has been relocated and the address must be changed in the regulations. The deletion of the Board's mailing address from the regulations will require no further amendment to the regulations if the Board's office is relocated again.

DATES: *Effective Date:* August 23, 2013.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (301) 334–2891; toll free (888) 720–9917; facsimile (202) 205–2800; or electronic mail: *Patricia.Petrella@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Potato Research and Promotion Plan (Plan) (7 CFR part 1207). The Plan is authorized under the Potato Research and Promotion Act (Act) (7 U.S.C. 2611–2627).

Executive Order 12866 and Executive Order 13563

Executive Order 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 as "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 311 of the Act (7 U.S.C. 2620), a person subject to a plan may file a petition with USDA stating that such plan, any provision of such plan, or any obligation imposed in connection with such plan, is not in accordance with law and request a modification of such plan or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided that a complaint is filed not later than 20 days after date of the entry of the ruling.

Background

This rule amends the structure of the Committee of the Board and deletes the Board's mailing address from the regulations. The Plan is administered by the Board with oversight by USDA. Under the Plan, assessments are collected from handlers and importers and used for projects to promote potatoes and potato products.

This rule modifies the structure of the Board's Administrative Committee as prescribed in the Plan by increasing the number of Vice-Chairperson positions on the Committee from seven to nine. These additional positions would be allocated, as provided in the Board's bylaws, to the Northwest and North Central caucuses. The Northwest district includes Alaska, Idaho, Montana, Oregon and Washington. The North Central district includes Illinois, Indiana, Iowa, Michigan, Missouri, Minnesota, North Dakota, Ohio, South Dakota, and Wisconsin. With this action, Board representation at the executive level for potato producers in the Northwest district increases from 28.5 percent to 33 percent and in the North Central district from 14 percent to 22 percent.

Section 1207.327(b) of the regulations provides the authority to the Board to make rules and regulations, with USDA approval, to effectuate the terms and conditions of the Plan. Section 1207.328(a) of the Plan provides the authority to the Board to select from its members such officers as may be necessary and to adopt such rules for the conduct of its business as the Board may deem advisable.

Section 1207.507(a) of the Plan's administrative rules delineates the structure of the Board's Administrative Committee. The Committee is selected from among Board members, and is composed mostly of producer members, with one or more importer member(s), and the public member. The Board, through the adoption of its bylaws, may prescribe the manner of selection and the number of members; except that the regulations mandate that the Committee shall include a Chairperson and a fixed number of Vice-Chairpersons. The change is intended to facilitate increased involvement in the Board's leadership opportunities from the Northwest and North Central caucuses and possibly increase diversity at higher positions on the Board.

Prior to this change, the Plan provided for seven Vice-Chairperson positions on the Committee. Vice-Chairperson positions are allocated in the Board's bylaws to represent production districts as determined by the Board. This action increases the number of Vice-Chairperson positions to nine. The additional Vice-Chairpersons would be allocated to the Northwest and North Central caucuses, which historically have been the caucuses with the greatest production.

The second change will delete the Board's mailing address from the Plan's rules and regulations. Section 1207.501 of the Plan specifies that all communications in connection with the Plan shall be addressed to: National Potato Promotion Board, 7555 East Hampden Avenue, Suite 412, Denver, Colorado, 80231. The Board moved to a new location within Denver, Colorado. Therefore, this section would need to be amended. However, USDA is recommending that this section be deleted so no further amendment would be required if the Board moves its office in the future. Interested persons wanting to contact the Board can reach them through their Web site, Facebook, or smartphone application.

Board Recommendation

The Board met on March 14, 2013, and unanimously recommended amending the Committee structure of the Board and amending the Board's mailing address from the Plan. This action would contribute to effective administration of the program.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

According to the Board, it is estimated that in 2013 there are about 2,500 producers, 1,030 handlers and 240 importers of potatoes and potato products who are subject to the provisions of the Plan.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (domestic handlers and importers) as those having annual receipts of no more than $7.0 million. Under these definitions, the majority of the handlers, producers and importers that would be affected by this rule would be considered small entities.

This rule amends the structure of the Administrative Committee of the Board and deletes the Board's mailing address from the regulations. The Plan is administered by the Board with oversight by the U.S. Department of Agriculture (USDA). As provided for in the regulations, there are seven Committee Vice-Chairperson positions. The Board has recommended that these positions be increased to nine Vice-Chairpersons. This change is intended to facilitate increased involvement in the Board's leadership opportunities. The deletion of the Board's mailing address will require no further amendment to the regulations if the Board's office is relocated. The Board's office is being relocated without the amendment to the regulations made in this final rule. A change to the regulations would be necessary.

This rule will amend section 1207.507(a) of the regulations by changing the number of Vice-Chairperson positions from seven to nine. Also, the Board's office address will be removed from § 1207.501 of the regulations.

Regarding the economic impact of this rule on affected entities, this action will impose no costs on producers, handlers, and importers as a result of this action. Both changes are administrative in nature; it would merely provide additional opportunities for increased involvement by producers in the Board's leadership opportunities from the larger production areas.

Regarding alternatives, one option to the action would be to maintain the

status quo and not change the Administrative Committee structure. This will not alleviate the concerns voiced by the Northwest and North Central caucuses for more representation and leadership opportunities. The Board also considered combining the Southwest caucus into the Northwest caucus. The Board concluded that this would cause the Southwest producers to lose their representation as there are more Northwest producers and the available seats could possibly be absorbed by all Northwest producers. Therefore, the recommendation was approved, as it will allow greater opportunity for producers from the Board's two largest caucus districts to become engaged in the Board's leadership structure. This action will also make the representation on the Board more equitable according to production.

A proposed rule concerning this action was published in the **Federal Register** on June 28, 2013 (78 FR 38846). The proposal was made available through the Internet by USDA, the Office of the Federal Register, and the Board. A 15-day comment period ending July 15, 2013, was provided to allow interested persons to submit comments.

Analysis of Comment

One comment was received in response to the proposed rule. The comment is addressed in the following paragraphs. The commenter raised a number of issues concerning the need for the program to spend American tax dollars and that another Federal bureaucracy is unnecessary; retaining the Board's address in the regulatory text; decreasing the number of Vice-Chairpersons to five; and conducting meetings by video or webinar.

One issue that the commenter raised was that there is no need for the program to spend American tax dollars and that another Federal bureaucracy is unnecessary. The program is paid for by the potato industry through assessments on domestic handlers and importers. Research and promotion programs overseen by USDA are self-help programs funded by their respective industry and do not receive taxpayer funds. The Potato Research and Promotion Program authorized by the Potato Research and Promotion Act and the Potato Research and Promotion Plan itself was established in March 1972.

Another issue stated by the commenter was that the Board's address should be retained in the regulatory text. The deletion of the Board's mailing address from the regulatory text will require no further amendments to the regulations. The Board can easily be contacted by using their Web site, Facebook or smartphone application. Further, the Board's Web site in addition to the USDA Web site contain the Board's address. In addition, deleting the address is a cost savings measure to the potato industry since no further rulemaking will be necessary if the Board moves its offices in the future.

The commenter also recommended that the Vice-Chairpersons should be decreased to five instead of nine as proposed by the Board. The Board recommended this change and discussed it thoroughly at various meetings. The change will facilitate increased involvement in the Board's leadership opportunities from the Northwest and North Central caucuses and possibly increase diversity at higher positions on the Board. Decreasing the number of Vice-Chairpersons on the Board would not accomplish the intent of the change.

Finally, the commenter commented that Board meetings should be on the web and videoed for the public to view. The Board meets in person once a year and the Administrative Committee meets three times a year. During certain circumstances committees will meet by teleconference. All meetings of the Board are open to the public and minutes of all the meetings are available. Accordingly, based upon our consideration of the comment received no changes have been made to the regulatory text.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This rule will not result in a change to the information collection and recordkeeping requirements previously approved and will impose no additional reporting and recordkeeping burden on potato producers, handlers, and importers.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, this action was discussed by the Board at meetings over the past year. Board members discussed the changes with their respective regions and received positive feedback. The Board met in March 2013 and unanimously made its recommendation. All of the Board's meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Administrative Committee is meeting on October 21, 2013, and it would be appropriate that the additional Vice-Chairpersons should be able to participate in those meetings. In addition, the Board's office has already relocated so the address needs to be deleted promptly. Further, handlers, producers and importers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Imports, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1207 is amended as follows:

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

■ 1. The authority citation for 7 CFR part 1207 continues to read as follows:

Authority: 7 U.S.C. 2611–2627 and 7 U.S.C. 7401.

§ 1207.507 [Removed and Reserved]

■ 2. Section 1207.501 is removed and reserved.

■ 3. Section 1207.507(a) is revised to read as follows:

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee composed of producer members as provided for in the Board's bylaws, one or more importer members, and the public member. Selection shall be made in such manner as the Board may

prescribe: Except that such committee shall include the Chairperson and nine Vice-Chairpersons, one of whom shall also serve as the Secretary and Treasurer of the Board.

* * * * *

Dated: August 16, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20489 Filed 8–21–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0267; Airspace Docket No. 13–ASW–2]

Amendment of Class E Airspace; Fort Polk, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Fort Polk, LA. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Polk Army Airfield (AAF). The airport's geographic coordinates are also adjusted. This action enhances the safety and management of Instrument Flight Rule (IFR) operations at the airport.

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

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

SUPPLEMENTARY INFORMATION:

History

On April 30, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Fort Polk, LA, area, creating additional controlled airspace at Polk AAF (77 FR 25228) Docket No. FAA–2013–0267. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Polk AAF, Fort Polk, LA. A small segment extends from the current 7.6-mile radius of the airport to 20.2 miles north of the airport to provide adequate controlled airspace for the safety and management of IFR operations at the airport. Geographic coordinates are also be updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII. Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Polk AAF, Fort Polk, LA.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

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

* * * * *

ASW LA E5 Fort Polk, LA [Amended]

Fort Polk, Polk AAF, LA
(Lat. 31°02′41″ N., long. 93°11′30″ W.)
Polk VORTAC
(Lat. 31°06′42″ N., long. 93°13′04″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Polk AAF, and within 8 miles west and 4 miles east of each side of the 340° radial from the Polk VORTAC extending from the 7.6-mile radius to 20.2 miles north of the airport, excluding that airspace within restricted areas R–3803A, R–3804A, and R–3804B.

Issued in Fort Worth, Texas, on August 12, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–20379 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1140; Airspace Docket No. 12–ASW–11]

Amendment of Class E Airspace; Harlingen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Harlingen, TX. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures due to the decommissioning of the Sebas locator outer marker/nondirectional radio beacon (LOM/NDB) at Valley International Airport. The airport's name and geographic coordinates are also updated. This action enhances the safety and management of Instrument Flight Rule (IFR) operations at the airport.

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

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

SUPPLEMENTARY INFORMATION:

History

On April 30, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Harlingen, TX, area, creating additional controlled airspace at Valley International Airport (77 FR 25226) Docket No. FAA–2012–1140. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures due to the decommissioning of the Sebas LOM/NDB at Valley International Airport (formerly Rio Grande Valley International Airport), Harlingen, TX. Small segments would extend from the 7.8-mile radius of the airport to 12.3 miles north and 11.5 miles south of the airport to provide adequate controlled airspace for the safety and management of IFR operations. Geographic coordinates are updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Valley International Airport, Harlingen, TX.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

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

* * * * *

ASW TX E5 Harlingen, TX [Amended]

Harlingen, Valley International Airport, TX
(Lat. 26°13′38″ N., long. 97°39′19″ W.)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Valley International Airport, and within 2 miles each side of the 181° bearing from the airport extending from the 7.8-mile radius to 11.5 miles south of the airport, and within 2.5 miles each side of the 000° bearing from the airport extending from the 7.8-mile radius to 12.3 miles north of the airport.

Issued in Fort Worth, Texas, on August 12, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–20378 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0274; Airspace Docket No. 13–ACE–2]

Establishment of Class E Airspace; Stockton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Stockton, KS. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Rooks County Regional Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

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

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

SUPPLEMENTARY INFORMATION:

History

On April 30, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace for the Stockton, KS, area, creating controlled airspace at Rooks County Regional Airport (78 FR 25229) Docket No. FAA–2013–0274. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Rooks County Regional Airport, Stockton, KS, with an extension from the 7-mile radius to 10.1 miles south of the airport to contain aircraft executing new standard instrument approach procedures at the airport. Controlled airspace enhances the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Rooks County Regional Airport, Stockton, KS.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

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

* * * * *

ACE KS E5 Stockton, KS [New]

Stockton, Rooks County Regional Airport, KS (Lat. 39°20′48″ N., long. 99°18′17″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Rooks County Regional Airport, and within 2 miles each side of the 181° bearing from the airport extending from the 7-mile radius to 10.1 miles south of the airport.

Issued in Fort Worth, Texas, on August 12, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–20376 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 74

RIN 2900–AO49

VA Veteran-Owned Small Business Verification Guidelines

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, the interim final rule published in the **Federal Register** on June 27, 2012. This document implements a portion of the Veterans Benefits, Health Care, and Information Technology Act of 2006, which requires the Department of Veterans Affairs (VA) to verify ownership and control of veteran-

owned small businesses (VOSBs), including service-disabled veteran-owned small businesses (SDVOSBs), in order for these firms to participate in VA acquisitions set asides for SDVOSB/VOSBs. Specifically, this final rule requires re-verification of SDVOSB/VOSB status only every 2 years rather than annually. The purpose of this change is to reduce the administrative burden on SDVOSB/VOSBs regarding participation in VA acquisitions set asides for these types of firms. Verified SDVOSB/VOSBs are placed on the Vendor Information Page (VIP) at *www.vetbiz.gov*.

DATES: *Effective Date:* This rule is effective August 22, 2013.

FOR FURTHER INFORMATION CONTACT: Michelle Gardner-Ince, Director, Center for Veterans Enterprise (00VE), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, phone (202) 303–3260 x5237. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 27, 2012, VA published in the **Federal Register** (77 FR 38181) an interim final rule that revised the requirement for re-verification of SDVOSB/VOSB status from 1 year to 2 years. As noted in the preamble to the interim final rule, VA has concluded that an annual examination is not necessary to adequately maintain the integrity of the Verification Program.

We provided a 60-day comment period that ended on August 27, 2012. We received six comments. Four commenters discussed that the words "open market" should be removed from the sentence "In accordance with 38 U.S.C. 8127 and VA Acquisition Regulation, 48 CFR part 819, VA is required to set aside any open market procurement for SDVOSBs and then VOSBs, first and second respectively, if two or more such concerns are reasonably anticipated to submit offers at fair and reasonable pricing." This sentence was part of the background information contained in the preamble and not a part of the regulatory language. VA's interpretation with respect to the traditional relationship between set-asides conducted in open-market acquisitions and the Federal Supply Schedule (FSS), namely that agencies are not required to implement set-aside programs before or while using the FSS, has been upheld in *Kingdomware Technologies, Inc.* v. *United States*, 107 Fed. Cl. 226 (2012). In any event, the regulatory language only addressed the expansion of the SDVOSB/VOSB re-verification status requirement from 1 year to 2 years and, therefore, these comments are outside the scope of this rulemaking. We make no changes based on these comments. Two additional commenters endorsed the proposed change. VA appreciates the commenters' support.

Based on the rationale set forth in the interim final rule and for the reasons discussed above, we adopt the interim final rule as a final rule without change.

Administrative Procedure Act

This document affirms as final the interim final rule that is already in effect. In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs concluded that there was good cause to dispense with advance public notice and opportunity to comment on this rule and good cause to publish this rule with an immediate effective date. The rule makes only a minor modification to extend the eligibility period for SDVOSB/VOSBs after VA's initial robust verification examination and approval from 1 year to 2 years. The rule reduces the administrative burden on SDVOSB/VOSB participants by eliminating annual re-verification submissions. The integrity of the program remains protected by the initial robust and detailed verification examination, the regulatory requirement of participants to report changes to ownership and control during their eligibility period, VA's authority to conduct random site examinations and to re-examine eligibility upon receipt of any reasonably credible information affecting SDVOSB/VOSB verified status, and, for individual acquisitions, the status protest process, where VA contracting officers or competing vendors can challenge the SDVOSB/VOSB status of offerors if a reasonable basis can be asserted to be decided by VA's Office of Small and Disadvantaged Business Utilization on SDVOSB/VOSB set-aside acquisitions. In view of the detrimental effects of continuing an unnecessary administrative burden on program participants and verifying officials, and to avoid delays in verification caused by repetitive annual reviews, the Secretary concluded that it was impracticable, unnecessary, and contrary to public interest to delay the effective date of this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, applies to this final rule. This final rule is generally neutral in its effect on small businesses because it relates only to small businesses applying for verified status in VA's SDVOSB/VOSB verified database. The overall impact of the rule will benefit small businesses owned by veterans or service-disabled veterans because it will reduce their administrative burden associated with maintaining verified status by extending the need for re-verification by VA from 1 year to 2 years. VA has estimated the cost to an individual business to be less than $100.00 for 70–75 percent of the businesses seeking verification, and the average cost to the entire population of businesses seeking to become verified is less than $325.00 on average. Increasing the verification period will decrease the frequency of any such costs. On this basis, the Secretary certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action" requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy

implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/,* by following the link for "VA Regulations Published."

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no new provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

This final rule affects the verification guidelines of veteran-owned small businesses, for which there is no Catalog of Federal Domestic Assistance program number.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs approved this document on July 7, 2013, for publication.

List of Subjects in 38 CFR Part 74

Administrative practice and procedures, Privacy, Reporting and recordkeeping requirements, Small business, Veteran, Veteran-owned small business, Verification.

Dated: August 19, 2013.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

Accordingly, the interim final rule amending 38 CFR part 74, which was published on June 27, 2012, at 77 FR 38181, is adopted without change.

[FR Doc. 2013–20488 Filed 8–21–13; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0502; FRL–9900–30–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Disapproval of $PM_{2.5}$ Permitting Requirements; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published a final rule in the **Federal Register** on July 25, 2013, disapproving a Wisconsin State Implementation Plan revision pertaining to permitting requirements relating to particulate matter of less than 2.5 micrometers ($PM_{2.5}$). An error in the amendatory instruction is identified and corrected in this action.

DATES: *Effective Date:* This final rule is effective on August 26, 2013.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a final rule document on July 25, 2013, (78 FR 44881) disapproving revisions to Wisconsin rules NR 400, 404, 405, 406, 407, 408 and 484, submitted by the State on May 12, 2011, because the rule revisions submitted are not consistent with Federal regulations governing state permitting programs. In this disapproval EPA erroneously stated that the revision was being made to 40 CFR 52 Subpart P—Indiana, but the language should have said the revision was being made to Subpart YY—Wisconsin. Therefore, the amendatory instruction is being corrected to reflect the corrected subpart reference.

Correction

In the final rule published in the **Federal Register** on July 25, 2013, (78 FR 44881), on page 44884, second column, below amendatory instruction 1, "Subpart P—Indiana" is corrected to read: "Subpart YY—Wisconsin".

Dated: August 12, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–20416 Filed 8–21–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 5

Office of the Secretary of the Interior

43 CFR Part 5

Fish and Wildlife Service

50 CFR Part 27

[NPS–WASO–VRP–09328; PXXVPADO515]

RIN 1024–AD30

Commercial Filming and Similar Projects and Still Photography Activities

AGENCY: National Park Service, Office of the Secretary of the Interior, and Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule implements legislation that directs the Department of the Interior to establish permits and reasonable fees for commercial filming activities or similar projects and certain still photography activities.

DATES: The rule is effective September 23, 2013.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, Special Park Uses Program Manager, National Park Service, 1849 C Street NW., CODE 2460, Washington, DC 20240, telephone: 202–513–7092 or email: *Lee_Dickinson@nps.gov.*

SUPPLEMENTARY INFORMATION: We published a proposed rule on this subject in the **Federal Register** on August 20, 2007 (72 FR 46426). The proposed rule's comment period ended on October 19, 2007, and resulted in 57 submissions containing 30 distinct comments. We made numerous changes to the rule in response to these comments. These comments and our responses are summarized in this preamble under *Response to Comments.*

Public Law 106–206

- Directs the Secretaries of the Interior and Agriculture to establish a permit system for commercial filming and similar activities.
- Directs the Secretaries to collect an amount to cover agency costs as well as a reasonable fee for the use of Federal

lands based on the size of the film crew, the number of days the permitted activity takes place, the amount and type of equipment present, and other factors.

- Authorizes commercial filming and still photography permits subject to statutory criteria. It is in the public's interest to manage these activities through a permitting process to minimize damage to the cultural or natural resources, prevent interference with other visitors, and promote safety and security. For the purposes of this rule, the term "commercial filming" includes commercial videography and other magnetic imaging.

This Rule

- Defines commercial filming and still photography and explains which activities require a permit, thereby ensuring consistency among agencies in the Department of the Interior (DOI).
- Establishes seven factors for denying the request for a permit.
- Allows each of the DOI agencies to impose reasonable permit terms and conditions to mitigate the impact of the activity on agency resources and visitor use and enjoyment and allows the issuing agency to revoke the permit for violation of a permit condition.
- Sets out the financial responsibilities of the permit holder, including payment of the location fee, reimbursement of any costs incurred by the agency as a result of processing the application and monitoring the permitted activity, and maintaining required liability insurance and surety bonds.

Background and Need for Action

The background and need for action were described in detail in the preamble to the proposed rule published in the **Federal Register** on August 20, 2007 (72 FR 46426). As stated in the preamble to the proposed rule, other than renumbering 43 CFR 5.2 and making a technical correction to a citation in that section, this rule does not affect or amend the regulation governing areas administered by the Bureau of Indian Affairs, currently codified at 43 CFR 5.2. The proposed rule's comment period ended on October 19, 2007. DOI received 57 submissions. These comments are summarized below.

Response to Comments

Comment 1: The regulation puts too many restrictions on still photographers and requires most still photographers, including hobbyists and visitors, to obtain a permit and pay fees to photograph on agency lands.

Response: This was not the intent of the proposed regulation. The general rule is that still photography does not require a permit. We have edited the language of 43 CFR 5.3(b) to clarify the still photography permit requirements of Public Law 106–206 and renumbered it as § 5.2(b). This regulation implements the three circumstances listed in the law where a permit for still photography is or may be required. We will require a permit for still photography when the activity uses models, sets, or props, and we may require a permit when the photographer wants to enter an area closed to the public or when on-site management is necessary to protect resources or to avoid visitor conflicts. However, we anticipate that most still photographers will not fall into these categories and will not need a permit to take photographs on lands managed by DOI agencies.

Comment 2: The provisions governing sound recording are too restrictive. Sound recording should not be included in this regulation, since Public Law 106–206 addressed commercial filming and still photography and did not address audio recording.

Response: The previous regulation found at 43 CFR part 5 pertaining to lands we manage included sound recording among the activities that required a permit. Moreover, Public Law 106–206 applies to "commercial filming activities or similar projects," which we interpret to include audio recording. In response to the comments received to the proposed rule, we evaluated the potential impact of sound recording activities on cultural and natural resources and on other visitors. Taking into account the different agency missions and diverse cultural and natural resources, we decided to address the permit requirements for audio recording in agency-specific regulations.

The National Park Service (NPS) and the Fish and Wildlife Service (FWS) will continue to require permits for audio recording activities using criteria similar to those set out in Public Law 106–206 for still photography. Audio recording activities in units of the National Park System and on National Wildlife Refuge lands will require a permit only if the activity takes place in a closed area, involves more than hand-held equipment, or requires agency oversight. The Bureau of Land Management (BLM) has the discretion to manage audio recording under the permit requirements contained in other regulations.

Title 43 CFR Subpart B applies to areas administered by the Bureau of Indian Affairs (BIA). This Subpart was published as part of the proposed rule of August 20, 2007, to make technical corrections to the existing regulation published in 1957. BIA will continue to require a permit for sound recording.

Comment 3: The phrase "unreasonable disruption of or conflict with the public's use and enjoyment of the site" used in § 5.4(b) needs to be clarified.

Response: We have renumbered proposed 43 CFR 5.4(b) as § 5.5(b). The term "unreasonable disruption of the public's use and enjoyment of the site" comes directly from Public Law 106–206. Authorizing laws for each agency and applicable enabling laws for each Federal land unit determine the primary purposes of Federal management of those sites. A determination of "unreasonable disruption" will be made by each BLM field office manager, FWS refuge unit manager, and NPS unit manager based on agency statutes, regulations, policy, and guidance.

Comment 4: The proposed regulation allowing an agency to deny permission to photograph if they feel the photography is "inappropriate" or "incompatible" is too vague and can be subject to interpretation (§ 5.4(a)(5)).

Response: We have renumbered proposed 43 CFR 5.4(a)(5) as § 5.5(e), which applies to the National Wildlife Refuge System. The statement is based on the requirements of the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57), which requires that refuge managers discontinue or not approve activities that are inappropriate or incompatible with the refuge's mission. For example, a refuge manager may make a determination that the photography activity is inappropriate or incompatible with the refuge's mission if the activity would negatively impact a threatened species, not on the basis of the possible content of the photograph.

Comment 5: The criteria listed in 43 CFR 5.4(d), (e) and (f) as bases to deny a permit are very broad and quite subjective in their practical application.

Response: We have moved the criteria formerly in proposed 43 CFR 5.4 to § 5.5. The criteria referred to in this comment are all based upon statutory requirements. Sections 5.5(a)–(c) are taken directly from Public Law 106–206 and will be applied by individual land managers in accordance with agency-specific laws, regulations, policy, and guidance.

- Section 5.5(d) is required under the NPS Organic Act, (16 U.S.C. 1 *et seq.*). This legal requirement is interpreted in the "NPS Management Policies 2006" section 8.1.1, which states that the NPS will

allow only those uses that are (1) appropriate to the purpose for which the park was established, and (2) can be sustained without causing unacceptable impacts . . . uses that would impair a park's resources, values, or purposes cannot be allowed.

- Section 5.5(e) is based on the National Wildlife Refuge System Improvement Act of 1997, (Pub. L. 105–57), which requires that each refuge be managed to fulfill the mission of the System and the purposes for which the refuge was established. A refuge manager must ensure that a particular use would not interfere with or detract from the mission of the refuge as well as the Refuge System.
- Section 5.5(f) is based on Section 302(b) of the Federal Land Policy and Management Act ((FLPMA), 43 U.S.C. 1732(b)), which requires BLM to prevent unnecessary or undue degradation of BLM-managed lands.

Comment 6: A commenter wanted to know if different levels of commercial use would result in different location fee rates, if rates would be standardized or decided by local jurisdiction, how the location fees were being determined, and how the fees would be spent.

Response: DOI and U.S. Forest Service (USFS) are jointly developing a location fee schedule. In developing the schedule, we are taking into account the current fee schedules used by BLM and USFS, public comments received on a draft location fee schedule previously proposed by the NPS, and discussions with state and local film commissioners and industry representatives. As directed by Congress, the location fee is strictly a fee to provide a "fair return" for the use of the Federal lands. No overhead costs or other types of cost recovery costs are included in the fee.

We are publishing the proposed location fee schedule in today's **Federal Register** for public review and comment. Once we have analyzed public comments on the proposed location fee schedule, we will publish a notice in the **Federal Register** announcing the final location fee schedules and the procedure for periodically reviewing the location fee schedule and announcing changes.

Public Law 106–206 requires us to base location fees on the number of days the activity takes place on Federal lands, the size of the crew, the amount of equipment, and other factors that we determine necessary. The proposed location fee schedule creates a per-day charge based on the number of people involved in the commercial filming or still photography activity. Under the proposed schedule, permit holders are charged a lower fee for days when there are fewer people present. For example, if a set-up day involves 20 people and the actual filming day involves 75 people, each day would result in a different fee.

Public Law 106–206 authorizes Federal land management agencies in DOI and USFS to collect a "fair return" for the use of lands for commercial filming and certain still photography activities. The law adopts the formula and purposes established in the Recreational Fee Demonstrations Program (Pub. L. 104–134) for use of the funds collected. The funds collected remain available for use at the location where the funds are collected and may be spent only for specific purposes including:

- Backlogged repair and maintenance projects, including those related directly to health and safety;
- Interpretation, signage, habitat, or facility enhancement;
- Resource preservation;
- Maintenance; and
- Law enforcement related to public use and recreation.

Comment 7: A commenter asked that a definition of "model" be added. The commenter felt that the section on the use of models, sets, or props would require everyone to get a permit. Visitors should not have to obtain a permit to take pictures of families and friends.

Response: A definition of "model" has been added to 43 CFR 5.12 providing that, for the purpose of this regulation, family members or friends not being filmed to promote the sale or use of a product or service are not considered models. Therefore this activity would not require a still photography permit. Filming and photography activities by visitors are addressed in § 5.2(c).

The definition also provides that individuals being photographed for events such as a wedding or a graduation are not considered models and therefore aren't required to have a permit for the still photography activity under those criteria. However, if the activity results in additional cost to the government due to required monitoring of the activity by agency employees, a permit may be required for which location fees and cost recovery charges may be collected. Other laws and regulations may also govern this type of still photography.

Comment 8: A commenter requested that a definition of "prop" and "set" be added.

Response: We have added a definition of "props and sets" in 43 CFR 5.12. Under Public Law 106–206, we must require a permit and establish a reasonable fee for still photography activities that use models or props. In this rule, we have used the terms "set" and "prop" to cover the use of large backdrops, temporary structures, and other construction that could be added to agency land to alter or enhance the setting. By definition, a camera tripod is not considered a prop. However, the use of a camera tripod could contribute to an agency's decision to require a permit for a still photography activity under § 5.2(b). One example might be still photography activities using a camera and a tripod in an area with limited space where the tripod could create a tripping hazard for other visitors. This activity might need monitoring by agency personnel to ensure visitor safety.

Comment 9: The proposed rule does not appear to require a permit for non-commercial filming that takes place where or when members of the general public are not allowed.

Response: The comment is correct; the rule does not address non-commercial filming because Public Law 106–206 does not address non-commercial filming. Activities such as student films and public service announcements may use models, sets, or props, require access to areas not open to the general public, or require monitoring to avoid resource damage. An amateur videographer might request access to an area not open to the general public. In these cases, the activities are subject to other statutes, regulations, policies, and guidance under which a permit may be required. For example, the NPS would require a person wishing to engage in non-commercial filming in a closed area to obtain a permit under 36 CFR 1.5(d). This regulation addresses photography by visitors in 43 CFR 5.2(c)

Comment 10: Title 43 CFR 5.3(b)(3) and § 5.3(b)(4) appear to be essentially the same thing.

Response: We agree with this comment and have consolidated proposed 43 CFR 5.3(b)(3) and § 5.3(b)(4) into § 5.2(b)(2)(ii).

Comment 11: Commercial filming should only require a permit if it satisfies the same requirements as still photography, i.e., the commercial filming uses models, sets, or props, enters an area closed to the general public, etc.

Response: Public Law 106–206 established different permit requirements for commercial filming and still photography. If a filming project is commercial, then the statute requires that a permit be issued and a fee charged to provide a fair return to the United States for the use of the Federal lands. To determine whether a filming activity is commercial or not,

the agency considers if it is intended for a market audience for the purpose of generating income. However the content of the material does not play a role in determining whether a permit is necessary.

Comment 12: Do not require a permit for commercial filming crews of 3 people or less. Individuals with small amounts of equipment should be explicitly excluded from the provisions of this act.

Response: Public Law 106–206 states that agencies "shall require a permit . . . for commercial filming activities." There is no basis for an exclusion based on crew size or amount of equipment under this statute. While it could be assumed that crews of three people or fewer have less potential for causing resource damage or interfering with the public's use or enjoyment of the site, the agencies governed by this regulation manage and protect some of the nation's most treasured and valuable natural and cultural resources. In many circumstances it is important for land managers to know the specific time and location of certain activities so permit terms and conditions may be used to mitigate the possibility of resource damage or impact to visitors. For example, park units may have limited space, fragile resources, or experience high visitation during a specific time period. Refuges may need to protect nesting areas of threatened or endangered species during certain times of the year. Permit applications for smaller crews with little equipment are likely to require less time to process, thereby incurring less cost for the permit holder. In addition, the size of an activity is reflected in the proposed location fee schedule that is being published separately in the **Federal Register** for public comment.

Comment 13: The purpose and final use of the images, recordings, or video should be irrelevant in determining the need for a permit.

Response: Public Law 106–206 established different permit requirements for still photography and commercial filming activities. Still photography requires a permit only if it meets several distinct criteria created by Congress, which are addressed in 43 CFR 5.2(b). These criteria are based on the potential for the activity to damage natural or cultural resource or interfere with visitors. The intended use of the image is not relevant to the decision to approve a still photography permit application.

The basis for requiring a permit for commercial filming is the commercial nature of the project. To determine whether a filming activity is commercial or not, the agency considers the intended use of the film or video. However, the content of the material does not play a role in the decision to approve or deny a permit request.

Comment 14: The regulation gives local officials the power through the imposition of an inappropriate fee to prevent documentation of a scene or activity that could be construed as critical of the agency.

Response: The decision to approve a request for a commercial filming or still photography permit will be based on the potential impact on cultural and natural resources and values and not on the content of the film or photograph. Title 43 CFR 5.5 provides a list of reasons that would result in the denial of a permit request. We will charge a location fee based on a location fee schedule. Local land managers will be required to use the location fee schedule to determine the correct location fee to charge. As directed by Public Law 106–206, the proposed location fee schedule contains higher fees for larger filming projects.

Comment 15: Still photography is a form of free speech and should not be subject to a permit.

Response: As intended by Congress, most still photographers will not be required to obtain a permit. However, Public Law 106–206 outlines several instances where a permit is either required or may be required by the agency, in recognition of the responsibility of the agencies to protect the resources entrusted to them. The permit ensures that the activity conforms to applicable laws and regulations through permit terms and conditions crafted to minimize damage to natural and cultural resources and disruption of other visitors, while remaining content neutral. This permit program is consistent with statutory as well as constitutional requirements.

Comment 16: Documentaries are a form of news, not commercial filming, and are the product of research, interviews, and analysis. The only difference is the time it takes to produce a finished product.

Response: Documentaries convey information to the viewing public with content that is unique to that production. Requests for filming activities are evaluated for potential impacts on agency resources, operations, and visitor activities. Agencies do not manage or control content through the permitting process. After carefully considering these comments we believe documentaries are commercial in nature and generate income for those involved in the production, and as such are subject to permit requirements, location fees, and cost recovery charges.

Comment 17: Title 43 CFR 5.8 is too vague and gives the administrator unspecified time to respond.

Response: Proposed § 5.8 has been renumbered as § 5.9. The agencies are pledging to process permit applications as quickly as possible. However, because of the varying scope and complexity of the requests and the sensitivity of the agencies' resources, it is impossible to include in the regulation specific time frames for processing applications. Requests may range from a few people as part of the crew to several hundred, from very little equipment to enough equipment to fill several tractor trailers. Permit requests are also subject to the requirements of the National Environmental Policy Act of 1969, the National Historic Preservation Act, and other applicable laws, which may add to the processing time. The proposed activity must be evaluated against the potential impact to the resources of the park, refuge, or district.

Comment 18: Permit costs should be based on the type of land impact and estimated project profits.

Response: Public Law 106–206 instructs agencies to charge a "fair return to the United States" based on a number of factors, including the number of days a filming activity takes place on Federal land, the size of the crew, and the amount and type of equipment. The agencies are publishing a proposed location fee schedule for public comment that has lower fees for activities with smaller crews, and higher fees for activities with larger crews. Public Law 106–206 also allows the Secretary to include other appropriate factors in the decision to set location fees. After carefully considering whether to tie location fees to the estimated profit of each project, the agencies concluded this approach was not feasible.

Cost recovery charges will be based on the actual amount of the costs incurred by the Federal agency in receiving and processing the permit request, monitoring by agency personnel, and other costs related to the permitted activity.

Comment 19: A commenter would like to see a permit developed that would allow access to any Federal land under one permit.

Response: An interagency permit would allow permit holders to move easily from one agency's jurisdiction to another. However, each agency has unique resources that must be protected, varying kinds and numbers of visitors, and specific legal mandates that need to

be followed. In addition, agencies only have the legal authority to permit special uses on the lands they manage; they cannot issue a permit for activities on lands managed by another agency.

Comment 20: In 43 CFR 5.7(a), who is responsible for determining what a "fair return" to the United States is?

Response: The proposed § 5.7(a) is renumbered as § 5.8(a). The agencies have developed a proposed location fee schedule, which we are publishing separately in today's **Federal Register** for public comment. The proposed location fee schedule is based upon consideration of fees charged by the public and private sectors, comments received on an earlier proposed location fee schedule published by NPS on December 14, 2000, (65 FR 78186), and on the criteria outlined in Public Law 106–206.

Comment 21: A commenter is concerned about the requirement for liability insurance, which is not required by Public Law 106–206. The commenter asked if there will be affordable insurance available on site, similar to when one rents a car.

Response: The agencies have a responsibility to protect the United States from financial loss due to the actions of a permit holder. Under the regulation, a permit holder may be required to obtain insurance in an amount sufficient to protect the United States. Agency officials will determine the necessary level of insurance based on the planned activity and the potential risk to natural and cultural resources as well as other factors. An agency official may determine that the appropriate amount of insurance for low risk activities is zero. Insurance, if required, will not be available through the Federal agency and must be obtained from the private sector.

Comment 22: Fees would impact most heavily those with smaller working budgets, and would make it harder for them to realize a profit.

Response: Consistent with Public Law 106–206, we are proposing a location fee schedule to be published separately in the **Federal Register** that would charge the required fair return for the use of Federal lands. The proposed location fee schedule is based on the number of days the Federal lands are used, the number of people involved, and the amount of equipment. The location fee schedule proposes lower location fees for smaller commercial filming and permitted still photography operations.

Comment 23: Permits and fees should not be required for filming, video, sound recording, or still cameras on Federal lands.

Response: Still photography activities require a permit only in the limited circumstances listed in 43 CFR 5.2(b). Commercial filming and similar projects require a permit in accordance with Public Law 106–206. The term "similar projects" in the law has been interpreted by the agencies to include audio recording; however any permit requirements for audio recording will be addressed by each agency individually. The NPS and FWS regulations implementing permit requirements for audio recording are included in this **Federal Register** publication.

Comment 24: News gathering is not a commercial activity; as such, it is not governed by Public Law 106–206 and should not be subject to the regulation.

Response: We agree that news gathering should not be treated in the same manner as other commercial filming activities, and the agencies intend to allow news media access to Federal lands to gather news. However, we may require news-gathering activities to obtain a permit for filming and still photography when time allows and the agency determines that a permit is required to protect agency resources, to avoid visitor use conflicts, to ensure public safety, or authorize entrance into a closed area. Permits issued for news-gathering activities are not subject to cost recovery charges or location fees. We have added a new section, 43 CFR 5.4, to address the permit requirements for news-gathering activities. News-gathering activities may be subject to narrowly tailored permit requirements that protect Federal resources while allowing news-gathering activity.

Coverage of breaking news will not require a permit, since the requirement could interfere with the ability of the news-gathering organization to obtain the story. However, in these cases, our employees may monitor or direct the activities to ensure the safety of the public and the media, to maintain order, and to protect natural and cultural resources.

Comment 25: Several commenters stated that news is more than just breaking news. Moreover, affiliation with a news organization should not be used to exclusively define a news-gathering activity; many freelance film producers are shooting footage for news organizations and their activity should be considered news gathering. It is improper to require the media to pay fees and charges to the government when gathering information in their capacity as media.

Response: We have added a definition for "news" and "news-gathering activities" in 43 CFR 5.12 in response to this comment. We agree that "news" is more than just breaking news. The term "breaking news" is a product of the electronic news era when broadcasters would interrupt programming to relay information about unfolding events. Reporters generally cover events as they occur and disseminate the information to the public as soon as possible. We agree that freelance reporters and videographers could be covering "news" and would be within the scope of this regulation. When time allows, individuals working in a news-gathering capacity may be required to obtain a permit under this section, but are not subject to location fees and cost recovery charges. The agencies will not include a permit condition that asserts any right or privilege to review, comment upon, or edit any film recorded by a news organization under a permit issued to them under these rules.

Comment 26: The provision in 43 CFR 5.3(c) that news coverage is subject to time, place, and manner restrictions if warranted to maintain order and ensure the safety of the public and the media, and to protect natural and cultural resources, is vague and vests unfettered discretion in the hands of the interpreting official.

Response: We have expanded § 5.3(c) in the proposed regulation and renumbered it as § 5.4. Management of news-gathering activities would be implemented only to ensure the safety of the public and the media, to maintain order, and to protect natural and cultural resources. There is a long legal tradition of allowing time, place, and manner restrictions to satisfy an overriding government interest. Restrictions will be the least restrictive necessary to protect government interests.

Comment 27: A commenter suggested that a registration program be instituted instead of a permitting process. Registration would provide the necessary information so that agencies would be aware of the activity while it was happening and also provide a way to locate any violators later should that be necessary.

Response: Public Law 106–206 requires permits in some circumstances. In addition, the primary purpose of a permit is to establish terms and conditions necessary to protect natural and cultural resources and minimize the potential conflict with other visitors. Applicants sign the permit acknowledging the permit conditions and agreeing to abide by them. The goal of the Federal agencies is first and foremost to protect natural and cultural resources. Locating a violator after the fact does not satisfy that goal.

Comment 28: The proposed regulation is too broad and gives the DOI agencies too much power to restrict access to certain areas by documentary filmmakers, sound recordists, and photographers. These proposed rules could be used to censor information, or to hide the effects of activities in certain areas, such as logging or drilling.

Response: The regulation in 43 CFR 5.5 lists seven specific grounds for denial of a permit request. The decision to approve or deny a request for a commercial filming or still photography permit will not be based on content. Paragraphs (a)–(c) are mandated by Public Law 106–206, paragraph (d) is required by the National Park Service Organic Act and "National Park Service Management Policies 2006", paragraph (e) is required by the National Wildlife Refuge System Administration Act, and paragraph (f) is based on Section 302(b) of FLPMA, 43 U.S.C. 1732(b)). Paragraph (g) states that no permit may be issued that violates any law, including the Wilderness Act, (16 U.S.C. 1131–1136).

Federal land managers may not arbitrarily exclude filmmakers or still photographers from specific areas. The reason for the denial of a permit request should be communicated to the applicant in writing and be properly documented in the administrative record.

Comment 29: Commenters were concerned about the potential for censorship, stating that granting permits based on the content of the material and the intended use of the product are open to abuse and create uncertainty and confusion.

Response: The decision to approve or deny a request for a commercial filming permit or still photography permit is not based on the content of the material. Applications for commercial filming activities and still photography are evaluated on the potential impact the activity may have on cultural and natural resources, on other visitors, on agency operations, and on the health and safety of visitors, permittee staff and agency employees. The agencies may not issue permits that authorize an illegal activity or activities likely to cause resource damage

Comment 30: One commenter requested that the rule adopt the definition of a representative of the news media found in 43 CFR 2.3, the regulation governing the DOI Freedom of Information Act procedures.

Response: We agree with the comment and have added the definition. The agencies have also added a definition of news-gathering activities based on the definition found in the Freedom of Information Act (FOIA) (5 U.S.C. 552 (a)(4)(A)(ii)), and the implementing regulations at 43 CFR 2.3 that defines "news" as ". . . information that is about current events or that is (or would be) of current interest to the public . . . ." FOIA defines news for the purpose of identifying those individuals or organizations that qualify for a waiver of or a reduction in fees.

We acknowledge that gathering and dissemination of news should be afforded the widest possible range of access. However, we have a Congressional mandate to carry out the missions assigned to us, which includes mitigating damage to the cultural and natural resources that we manage. In carrying out this mandate, we may require permits for news-gathering activities when the agency manager feels that a permit is needed to ensure the protection of the agency resources and there is sufficient time is issue the permit without impeding the new-gathering activities.

The agency manager will not require a permit if doing so would impede the news-gathering activity. When a permit is not issued, the news-gathering activity is subject to oral instructions from agency personnel in order to protect cultural and natural resources and to maintain order and ensure the safety of the public, agency personnel, and media representatives.

The terms and conditions of a permit for news-gathering activities will be only those necessary to protect agency cultural and natural resources; to maintain order; and to ensure the safety of the public, agency personnel, and the media. Restrictions will be the least restrictive necessary to protect these government interests. Further, permits will be issued without any cost.

Requests for permits will be processed expeditiously. Permit applications will be evaluated for, and permit conditions imposed based on, potential impacts on cultural and natural resources, as well as potential risks to members of the public, media representatives and agency personnel. The project content will not be a factor in approving the permit, though activities that violate Federal or other applicable law are prohibited.

Changes From the Proposed Rules

Title 43—Public Lands: Interior

The title of the 43 CFR Part 5 was edited to include language from Public Law 106–206.

Section 5.1 What does this subpart cover?

This section was not changed.

Former § 5.2 How are the terms defined in this subpart?

The definitions are now located in § 5.12 at the end of the subpart. The definition of commercial filming was expanded, and definitions of "news-gathering activities", "model", and "sets and props" were added.

Section 5.3 How do I apply for a filming permit?

This new section makes it easier for readers to locate information on how to apply for a permit.

Former § 5.3 When do I need a permit for commercial filming or still photography?

This section has been renumbered as § 5.2. The section was edited to clarify the DOI's position that still photography does not require a permit unless certain criteria are met, which are included in § 5.2(b). We believe that most still photography occurring on departmental lands covered by this regulation will not require a permit. We moved § 5.3(c) in the proposed rule containing permit requirements for news-gathering activities to a new section at § 5.4.

Section 5.4 When is a permit required for news-gathering activities?

This is a new section. We acknowledge that news-gathering activities should have the widest possible access. While allowing access, we must carry out our Congressional mandates, which include minimizing damage to cultural and natural resources that we manage. In carrying out this mandate, we may require permits for news-gathering activities, but permit terms and conditions will be only those necessary to protect agency cultural and natural resources, to maintain order, and to ensure the safety of the public, agency personnel, and the media. The more numerous the crew and the more equipment involved in the news-gathering activity; the more likely the land manager will be to require a permit. Permits will be issued without any cost to the permit holder.

If the news story is such that the requirement for a permit would interfere with the ability of the entity to gather the required footage or photographs, then the permit requirement will be waived, but the activity is still subject to the oral instructions of the agency representative in order to protect cultural and natural resources and to maintain order and ensure the safety of the public, agency personnel, and the media.

Section 5.5 When will an agency deny a permit for commercial filming or still photography?

The section was renumbered from § 5.4 in the proposed regulation. In paragraph (d) the words "unacceptable impacts" were added to conform to current National Park Service policy. Paragraph (g) was amended to add a reference to the Wilderness Act (16 U.S.C. 1131–1136).

Section 5.6 What type of permit conditions may the agency impose?

This section was renumbered from § 5.5 in the proposed regulation.

Section 5.7 What are my liability and bonding requirements as a permit holder?

This section was renumbered from § 5.6 in the proposed regulation. The section was edited to show that the agency may accept either a bond or a security.

Section 5.8 What expenses will I incur?

This section was renumbered from § 5.7 in the proposed regulation.

Section 5.9 How long will it take to process my request?

This section was renumbered from section § 5.8 in the proposed regulation. The section was edited to encourage early consultation between the agency and the applicant.

Section 5.10 Can I appeal a decision not to issue a permit?

This is a new section. In most cases decisions to appeal a denial of a permit request may be appealed to the next higher level of management authority, with the specific process and contact information available from the site manager.

Section 5.11 Information Collection

This section was added to address requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 5.12 How are terms defined in this subpart?

This section was § 5.2 in the draft regulation. In response to comments received, the definition of commercial filming was expanded, and definitions of news gathering activities, model and sets and props were added.

Sections 5.15 Through 5.18

These sections were not changed. No comments were received on these sections.

Title 50—Wildlife and Fisheries

Section 27.71 Commercial Filming and Still Photography and Audio Recording

The title of this section was changed to better reflect the content of the regulation and to use language from Public Law 106–206. The language from the draft regulation was edited and designated paragraph (a). Paragraph (b) specifically addresses comments received on audio recording, paragraph (c) allows for the enforcement of the regulation, paragraph (d) applies the location fee schedule for still photography to audio recording permits, and paragraph (e) authorizes the use of the cost recovery provisions of Public Law 106–206 and 31 U.S.C. 9701 by the U.S. Fish and Wildlife Service. Paragraph (f) addresses requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant because it will raise novel legal or policy issues, but it is not economically significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

DOI conducted an economic analysis under the RFA (5 U.S.C. 601 *et seq.*) of the economic effect on small entities of charging location fees for commercial filming and still photography activities conducted on Federal lands managed by several DOI agencies. The economic analysis was conducted using a draft location fee schedule that is being published separately in the **Federal Register** for public comment. We expect no increase in costs or prices for consumers or the Federal government or geographic regions, and only minor increases for individual industries and State and local governments and agencies.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*), is not required.

Takings (Executive Order 12630)

Under the criteria in section 2 of Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written

in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The DOI strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA)

This regulation requires individuals, entities, and companies wishing to do commercial filming and certain still photography activities on public lands to obtain a permit from the agency managing the public land. The permit holder is also responsible for reimbursing the agency for costs incurred and to pay a land use fee. The mechanics of applying for the permit and the forms involved are not addressed in this regulation, but are addressed in existing agency regulations and internal guidance. These existing information collections have the required OMB approval under the PRA.

The NPS uses application forms NPS 10–931 (Film—Short Form) and NPS 10–932 (Film—Long Form). Both forms are assigned OMB Control Number 1024–0026. BLM uses OMB-approved BLM Form 2920–1 (Land Use Application and Permit), which is assigned OMB Control Number 1004–0009. The FWS currently uses two application forms for commercial filming and still photography: FWS Form 1383–C (Permit Application Form: National Wildlife Refuge System Commercial Activities Special Use) and FWS Form 1383–G (Permit Application Form: National Wildlife Refuge System General Special Use). OMB has reviewed and approved both of these forms and assigned OMB Control No. 1018–0102, which expires June 30, 2014. These regulations do not contain additional information collection requirements that OMB must approve under the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA Act of 1969 is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because its environmental effects are too broad to lend themselves to meaningful analysis and will later be subject to the NEPA process. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

The location fee authorized by Public Law 106–206 and governed by this regulation is a fee collected for the use of Federal land through a permit issued by the responsible agency for a commercial filming or still photography activity. Any analysis required by NEPA, as well as the National Historic Preservation Act, would be conducted in conjunction with the permitting process and would evaluate the impact of the requested activity on the resource.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects

36 CFR Part 5

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, Motion pictures, National Parks, Recordings, Still photography, Transportation.

43 CFR Part 5

Motion pictures, Still photography, Television.

50 CFR Part 27

Wildlife refuges.

For the reasons set forth in the preamble, we amend 36 CFR Part 5, 43 CFR Part 5, and 50 CFR Part 27 as follows:

Title 36—Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 5—COMMERCIAL AND PRIVATE OPERATIONS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 17j–2, 462.

■ 2. Section 5.5 is revised to read as follows:

§ 5.5 Commercial filming, still photography, and audio recording.

(a) Commercial filming and still photography activities are subject to the provisions of 43 CFR part 5, subpart A. Failure to comply with any provision of 43 CFR part 5 is a violation of this section.

(b) Audio recording does not require a permit unless:

(1) It takes place at location(s) where or when members of the public are generally not allowed;

(2) It uses equipment that requires mechanical transport;

(3) It uses equipment that requires an external power source other than a battery pack; or

(4) The agency would incur additional administrative costs to provide management and oversight of the permitted activity to:

(i) Avoid unacceptable impacts and impairment to resources or values; or

(ii) Minimize health or safety risks to the visiting public.

(c) Cost recovery charges associated with processing the permit request and monitoring the permitted activity will be collected.

(d) The location fee schedule for still photography conducted under a permit issued under 43 CFR part 5 applies to audio recording permits issued under this part.

(e) *Information collection.* The Office of Management and Budget (OMB) has approved the information collection requirements associated with National Park Service commercial filming permits and assigned OMB Control Number 1024–0026. Your response is required to obtain or retain a benefit. We may not collect or sponsor and you are not required to respond to an information collection unless it displays a currently valid OMB control number. You may send comments on this information collection requirement to the Information Collection Clearance Officer, National Park Service, 1849 C Street, Washington, DC 20240.

Title 43—Public Lands: Interior

Subtitle A—Office of the Secretary of the Interior

■ 3. Part 5 is revised to read as follows:

PART 5—COMMERCIAL FILMING AND SIMILAR PROJECTS AND STILL PHOTOGRAPHY ON CERTAIN AREAS UNDER DEPARTMENT JURISDICTION

Subpart A—Areas Administered by the National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service

Subpart B—Areas Administered by the Bureau of Indian Affairs

Authority: 5 U.S.C. 301; 16 U.S.C. 1–3, 3a, 668dd–ee, 715i, 460*l*–6d; 25 U.S.C. 2; 31 U.S.C. 9701; 43 U.S.C. 1701, 1732–1734, 1740.

§ 5.1 What does this subpart cover?

This subpart covers commercial filming and still photography activities on lands and waters administered by the National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service.

§ 5.2 When do I need a permit for commercial filming or still photography?

(a) All commercial filming requires a permit.

(b) Still photography does not require a permit unless:

(1) It uses a model, set, or prop as defined in § 5.12; or

(2) The agency determines a permit is necessary because:

(i) It takes place at a location where or when members of the public are not allowed; or

(ii) The agency would incur costs for providing on-site management and oversight to protect agency resources or minimize visitor use conflicts.

(c) Visitors do not require a permit for filming or still photography activities unless the filming is commercial filming as defined in § 5.12 or the still photography activity involves one of the criteria listed in § 5.2 (b).

§ 5.3 How do I apply for a permit?

For information on application procedures and to obtain a permit application, contact the site manager at the location at which you seek to conduct commercial filming or still photography activities.

§ 5.4 When is a permit required for news-gathering activities?

(a) *Permit requirements.* News-gathering activities involving filming, videography, or still photography do not require a permit unless:

(1) We determine a permit is necessary to protect natural and cultural resources, to avoid visitor use conflicts, to ensure public safety or authorize entrance into a closed area; and

(2) Obtaining a permit will not interfere with the ability to gather the news.

(b) *Terms and conditions.* All permits issued under this section will include only terms and conditions necessary to maintain order, ensure the safety of the public and the media, and protect natural and cultural resources.

(c) *Exemptions.* A permit issued for news-gathering activities is not subject to location fees or cost recovery charges.

§ 5.5 When will an agency deny a permit for commercial filming or still photography?

We will deny a permit authorizing commercial filming or still photography if we determine that it is likely that the activity would:

(a) Cause resource damage;

(b) Unreasonably disrupt or conflict with the public's use and enjoyment of the site;

(c) Pose health or safety risks to the public;

(d) Result in unacceptable impacts or impairment to National Park Service resources or values;

(e) Be inappropriate or incompatible with the purpose of the Fish and Wildlife Service refuge;

(f) Cause unnecessary or undue degradation of Bureau of Land Management lands; or

(g) Violate the Wilderness Act (16 U.S.C. 1131–1136) or any other applicable Federal, State, or local law or regulation.

§ 5.6 What type of permit conditions may the agency impose?

(a) We may impose permit conditions including, but not limited to, conditions intended to:

(1) Protect the site's values, purposes, and resources, and public health and safety; and

(2) Prevent unreasonable disruption of the public's use and enjoyment.

(b) We may revoke your permit if you violate a permit condition.

§ 5.7 What are my liability and bonding requirements as a permit holder?

(a) *Liability.* In accepting a permit, you agree to be fully liable for any damage or injury incurred in connection with the permitted activity, and to indemnify and hold harmless the United States of America as a result of your actions. We may require you to obtain property damage, personal injury, commercial liability or public liability insurance in an amount sufficient to protect the United States from liability or other claims arising from activities under the permit. The insurance policy must name the United States of America as an additional insured.

(b) *Bond.* You are responsible for all response, repair and restoration if your activity causes damage to an area. We may also require you to provide a bond or other security sufficient to secure any obligations you may have under the permit and applicable laws and regulations, including the cost of repair, reclamation, or restoration of the area. The amount of the bond or security must be in an amount sufficient to provide full payment for the costs of response and restoration, reclamation, or rehabilitation of the lands in the event that you fail to adequately repair, reclaim, or restore the area as directed by the agency. If the amount of the bond or other security is inadequate to cover cost of the repair, reclamation, or restoration of the damaged lands or resources you will also be responsible for the additional amount.

§ 5.8 What expenses will I incur?

You must pay us a location fee and reimburse us for expenses that we incur, as required in this section.

(a) *Location fee.* (1) For commercial filming and still photography permits, we will require a reasonable location fee that provides a fair return to the United States.

(2) The location fee charged is in lieu of any entrance or other special use fees. However, the location fee is in addition to any cost recovery amount assessed in paragraph (b) of this section and represents a fee for the use of Federal

lands and facilities and does not include any cost recovery.

(3) We will assess location fees in accordance with a fee schedule, which we will publish in the **Federal Register** and also make available on the internet and at agency field offices. The location fee does not include any cost recovery.

(b) *Cost recovery.* You must reimburse us for actual costs incurred in processing your request and administering your permit. We will base cost recovery charges upon our direct and indirect expenses including, but not limited to, administrative costs for application processing, preproduction meetings and other activities, on-site monitoring of permitted activities, and any site restoration.

§ 5.9 How long will it take to process my request?

We will process applications for commercial filming and still photography permits in a timely manner. Processing times will vary depending on the complexity of the proposed activity. A pre-application meeting with agency personnel is encouraged and may assist us in processing your request for a permit more quickly. For information on application procedures contact the appropriate agency field office.

§ 5.10 Can I appeal a decision not to issue a permit?

Yes. If your request for a permit is denied, the site manager issuing the denial will inform you of how and where to appeal.

§ 5.11 Information collection.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*, and assigned the following OMB clearance numbers: 1024–0026 for the National Park Service, 1004–0009 for the Bureau of Land Management and 1018–0102 for the Fish and Wildlife Service. This information is being collected to provide land managers data necessary to issue permits for commercial filming or still photography permits on Federal lands. This information will be used to grant administrative benefits. The obligation to respond is required in order to obtain a benefit. You may send comments on this information collection requirement to the Departmental Information Collection Clearance Officer, U.S. Department of the Interior, 1849 C Street NW., MS3530, Washington, DC 20240.

§ 5.12 How are terms defined in this subpart?

The following definitions apply to this subpart:

Agency, we, our, or us means the National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service, as appropriate.

Commercial filming means the film, electronic, magnetic, digital, or other recording of a moving image by a person, business, or other entity for a market audience with the intent of generating income. Examples include, but are not limited to, feature film, videography, television broadcast, or documentary, or other similar projects. Commercial filming activities may include the advertisement of a product or service, or the use of actors, models, sets, or props.

Cost recovery means the money that an agency collects as reimbursement for actual costs it incurred to permit a particular activity, including but not limited to, accepting and processing a permit application and monitoring the permitted commercial filming or still photography activity.

Location fee means a land or facility use fee similar to rent that provides a fair return to the United States for the use of Federal lands or facilities when used for:

(1) Commercial filming activities or similar projects; and

(2) Still photography activities where a permit is required.

Model means a person or object that serves as the subject for commercial filming or still photography for the purpose of promoting the sale or use of a product or service. Models include, but are not limited to, individuals, animals, or inanimate objects, such as vehicles, boats, articles of clothing, and food and beverage products, placed on agency lands so that they may be filmed or photographed to promote the sale or use of a product or service. For the purposes of this part, portrait subjects such as wedding parties and high school graduates are not considered models, if the image will not be used to promote or sell a product or service.

News means information that is about current events or that would be of current interest to the public, gathered by news-media entities for dissemination to the public. Examples of news-media entities include, but are not limited to, television or radio stations broadcasting to the general public and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public.

(1) As methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), these alternative media will be considered to be news-media entities.

(2) A freelance journalist is regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, even if the journalist is not actually employed by the entity. A contract would present a solid basis for such an expectation; we may also consider the past publication record of the requester in making such a determination.

News-gathering activities means filming, videography, and still photography activities carried out by a representative of the news media.

Permit means a written authorization to engage in uses or activities that are otherwise prohibited or restricted.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

Resource damage means harm to the land or its natural or cultural resources that cannot reasonably be mitigated or reclaimed.

Sets and props means items constructed or placed on agency lands to facilitate commercial filming or still photography including, but not limited to, backdrops, generators, microphones, stages, lighting banks, camera tracks, vehicles specifically designed to accommodate camera or recording equipment, rope and pulley systems, and rigging for climbers and structures. Sets and props also include trained animals and inanimate objects, such as camping equipment, campfires, wagons, and so forth, when used to stage a specific scene. The use of a camera on a tripod, without the use of any other equipment, is not considered a prop.

Still photography means the capturing of a still image on film or in a digital format.

Videography means the process of capturing moving images on electronic media, e.g., video tape, hard disk or solid state storage.

Subpart B—Areas Administered by the Bureau of Indian Affairs

§ 5.15 When must I ask permission from individual Indians to conduct filming and photography?

Anyone who desires to go on to the land of an Indian to make pictures, television productions, or soundtracks

is expected to observe the ordinary courtesy of first obtaining permission from the Indian and of observing any conditions attached to this permission.

§ 5.16 When must I ask permission from Indian groups and communities?

Anyone who desires to take pictures, including motion pictures, or to make a television production or a soundtrack of Indian communities, churches, kivas, plazas, or ceremonies performed in these places, must:

(a) Obtain prior permission from the proper officials of the place or community; and

(b) Scrupulously observe any limitations imposed by the officials who grant the permission.

§ 5.17 When must I get a lease or permit?

If filming pictures or making a television production or a soundtrack requires the actual use of Indian lands, you must obtain a lease or permit under 25 CFR part 162.

§ 5.18 What wages must I pay to Indian employees?

Any motion picture or television producer who obtains a lease or permit for the use of Indian land under 25 CFR part 162 must pay a fair and reasonable wage to any Indian employed in connection with the production.

Title 50—Wildlife and Fisheries

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 27—PROHIBITED ACTS

■ 4. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 685, 752, 690d; 16 U.S.C. 460k, 460*l*–6d, 664, 668dd, 685, 690d, 715i, 715s, 725; 43 U.S.C. 315a.

■ 5. The heading for subpart G is revised to read as follows:

Subpart G—Disturbing Violations: Filming, Photography, and Light and Sound Equipment

■ 6. Section 27.71 is revised to read as follows:

§ 27.71 Commercial filming and still photography and audio recording.

(a) We authorize commercial filming and still photography on national wildlife refuges under the provisions of 43 CFR part 5.

(b) Audio recording does not require a permit unless:

(1) It takes place at location(s) where or when members of the public are not allowed;

(2) It uses equipment that cannot be carried or held by one person;

(3) It uses equipment that requires an external power source; or

(4) We would incur additional administrative costs to provide management and oversight of the permitted activity to:

(i) Avoid unacceptable impacts and impairment to wildlife or resource values;

(ii) Minimize health or safety risks to the visiting public

(c) Failure to comply with any provision of 43 CFR part 5 is a violation of this section.

(d) The location fee schedule for still photography conducted according to a permit issued under 43 CFR part 5 will apply to audio recording permits issued under this part.

(e) We will collect and retain cost recovery charges associated with processing permit requests and monitoring the permitted activities.

(f) *Information collection.* A Federal agency may not conduct or sponsor and you are not required to respond to a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this section have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned control number 1018–0102. The information is being collected to provide agency managers data necessary to issue permits and grant administrative benefits. The obligation to respond is required to obtain or retain a benefit. You may send comments on this information collection requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., Mailstop 2042–PDM, Washington, DC 20240.

David J. Hayes,

Deputy Secretary of the Interior.

[FR Doc. 2013–20441 Filed 8–21–13; 8:45 am]

BILLING CODE 4312–EJ–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

[Docket Number: 130809702–3702–01]

RIN 0660–AA27

Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is making certain changes to its regulations, which relate to the public availability of the Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual). Specifically, NTIA is releasing a new edition of the NTIA Manual, which Federal agencies must comply with when requesting use of radio frequency spectrum.

DATES: This regulation is effective on August 22, 2013. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 22, 2013.

ADDRESSES: A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue NW., Room 1087, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Mitchell, Office of Spectrum Management at (202) 482–8124 or *wmitchell@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

NTIA authorizes the U.S. Government's use of radio frequency spectrum. 47 U.S.C. 902(b)(2)(A). As part of this authority, NTIA developed the NTIA Manual to provide further guidance to applicable federal agencies. The NTIA Manual is the compilation of policies and procedures that govern the use of the radio frequency spectrum by the U.S. Government. Federal government agencies are required to follow these policies and procedures in their use of spectrum.

Part 300 of title 47 of the Code of Federal Regulations provides information about the process by which NTIA regularly revises the NTIA Manual and makes public this document and all revisions. Federal agencies are required to comply with the specifications in the NTIA Manual when requesting frequency assignments. *See* 47 U.S.C. 901 *et seq.*, Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp. at 158.

This rule updates section 300.1(b) of title 47 of the Code of Federal Regulations to specify the edition of the NTIA Manual that federal agencies must comply with when requesting frequency assignments. In particular, this rule amends § 300.1(b) by replacing "2008 edition of the NTIA Manual, as revised through May 2012" with "2013 Edition"

of the NTIA Manual, dated May 2013." *See* Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management, 77 FR 75567, 75567–68 (Dec. 21, 2012) (revising the Manual through May 2012). Upon the effective date of this rule, federal agencies must comply with the requirements set forth in the 2013 edition of the NTIA Manual.

The NTIA Manual is scheduled for revision in January, May, and September of each year and is submitted to the Director of the Federal Register for Incorporation by Reference approval. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and part 51 of title 1 of the Code of Federal Regulations. The NTIA Manual is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, by referring to Catalog Number 903–008–00048–2. It is also available online at *http://www.ntia.doc.gov/page/2011/manual-regulations-and-procedures-federal-radio-frequency-management-redbook.* The NTIA Manual is also on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Paperwork Reduction Act

This action does not contain collection of information requirements subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Executive Order 12866

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

Administrative Procedure Act/ Regulatory Flexibility Act

NTIA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive prior notice and opportunity for public comment because it is unnecessary. This action amends the regulations to incorporate by reference the most recent edition of the NTIA Manual. These changes do not impact the rights or obligations of the public because the NTIA Manual applies only to federal agencies. Because these changes impact only federal agencies, NTIA finds it unnecessary to provide for the notice and comment requirements of 5 U.S.C. 553. NTIA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness, for the reasons provided above. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Congressional Review Act

The NTIA Manual provides the policies and procedures for federal agencies' use of spectrum. The NTIA Manual does not substantially affect the rights or obligations of the public. As a result, this notice is not a "rule" as defined by the Congressional Review Act, 5 U.S.C. 804(3)(C).

Executive Order 13132

This rule does not contain policies having federalism implications as that term is defined in Executive Order 13132.

Regulatory Text

List of Subjects in 47 CFR Part 300

Communications, Incorporation by reference, Radio.

For the reasons set forth in the preamble, NTIA amends title 47, part 300 as follows:

PART 300—MANUAL OF REGULATIONS AND PROCEDURES FOR FEDERAL RADIO FREQUENCY MANAGEMENT

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

Authority: 47 U.S.C. 901 *et seq.*, Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

■ 2. Section 300.1(b) is revised to read as follows:

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

* * * * *

(b) The Federal agencies shall comply with the requirements set forth in the 2013 edition of the NTIA Manual, dated May 2013, which is incorporated by reference with approval of the Director, Office of the Federal Register in accordance with 5. U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Dated: August 16, 2013.

Angela M. Simpson,

Acting Deputy Assistant Secretary for Communications and Information.

[FR Doc. 2013–20413 Filed 8–21–13; 8:45 am]

BILLING CODE 3510–60–P

Proposed Rules

Federal Register
Vol. 78, No. 163
Thursday, August 22, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Doc. Number AMS–FV–12–0013]

Onions Other Than Bermuda-Granex-Grano/Creole; Bermuda-Granex-Grano

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type) and the United States Standards for Grades of Bermuda-Granex-Grano Type Onions which were issued under the Agricultural Marketing Act of 1946. The Agricultural Marketing Service (AMS) is proposing to amend the "similar varietal characteristic" and "one type" requirements to allow mixed colors of onions when designated as a mixed or specialty pack. The purpose of this revision is to update and revise the standards to more accurately represent today's marketing practices and to provide the industry with greater flexibility.

DATES: Comments must be received by October 21, 2013.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Branch, Specialty Crops Inspection Division, Fruit and Vegetable Program, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; Fax: (540) 361–1199, or on the web at: *www.regulations.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. Comments can also be viewed as submitted, including any personal information you provide, on the *www.regulations.gov* website.

FOR FURTHER INFORMATION CONTACT: Dave Horner, Specialty Crops Inspection Division, (540) 361–1128 or 1150. The current United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type) and the United States Standards for Grades of Bermuda-Granex-Grano Type Onions are available through the Specialty Crops Inspection Division website at *www.ams.usda.gov/scihome*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this regulatory flexibility analysis. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Proposed changes in two sets of standards would permit specified packs of mixed colors of onions to be certified to a U.S. grade. The proposed revisions apply to the United States standards for grades for two categories of onions: (1) Other Than Bermuda-Granex-Grano (BGG) and Creole Type and (2) BGG Type.

In each of the standards, except the section in the Other Than BGG and Creole Type standards which affects the U.S. No. 2 grade, it currently states that one of the requirements to be certified in a grade is that the onion pack contains "similar varietal characteristics." The wording would be changed to: "Similar varietal characteristics, except color when designated as a specialty or mixed pack." In the U.S. No. 2 grade for the Other Than BGG and Creole Type standards, the wording would be changed to "One type, except when designated as a specialty or mixed pack." The additional wording would permit onions of different colors in the same pack as long as the pack is appropriately designated as a "specialty or mixed pack." Allowing the commingling of mixed colors in an onion pack, when designated, will facilitate the marketing of onions by providing the industry with more flexibility that reflects current industry practices, thereby encouraging additional commerce.

A farm-level estimate of the size of the U.S. onion industry can be obtained from National Agricultural Statistics Service (NASS) data. Averaging NASS onion production for the most recent 3 years (2009–2011) yields a U.S. production estimate of 74.4 million hundredweight (cwt), of which about 10 million cwt (13 percent) are onions for processing. Subtracting 10 million for processing from the total 74.4 million cwt yields an estimate of 64.4 million cwt sold for the fresh market. The total 3-year average onion crop value is $955.4 million and the value of onions for processing is $86.5 million. The difference is a computed estimate of $868.9 million for the crop value sold into the fresh market. Average onion acreage for the period 2009–2011 is 149,320. Dividing total crop value by acreage yields a 3-year average grower revenue per acre estimate of about $6,400.

An estimate of the total number of onion farms from the 2007 Agricultural Census (the most recent data available on farm numbers) is 4,074. An onion farm is defined by the Census as a farm from which 50 percent or more of the value of agricultural sales are from onions. The Small Business Administration (SBA) threshold for a large business in farming is $750,000 in annual sales. With average revenue per acre of $6,400, 117 acres of onions would generate approximately $750,000 in crop value. Census data shows that 3,679 out of a total of 4,074 farms (91 percent) are less than 100 acres. Most onion farms would therefore be considered small businesses under the SBA definition, in terms of onion sales only (not including sales of other crops). There is no published data with which to make comparable estimates of the number of packers or shippers of onions.

Three fourths of the value of production for U.S. onions comes from six states. In declining order of magnitude, with market shares ranging from 18 to 8 percent, those states are: California, Washington, Oregon,

Georgia, Texas, and Nevada. The remaining states for which NASS reports onion production are New Mexico, Idaho, New York, Colorado, Michigan, Wisconsin, and Arizona.

Benefits of the proposed changes substantially outweigh the costs. The only additional cost borne by packers/shippers, which is expected to be minimal, is when "specialty or mixed packs" are designated by means of labeling. There are no other additional costs to packers/shippers or growers from this change, and smaller entities would not bear a disproportionate cost. The proposed change in the standards reflects a shift in onion packing/shipping practices that is already underway. The additional flexibility in the revised standards will facilitate additional onion sales, to the benefit of growers, packers, and consumers.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Background and Proposed Rule

AMS has observed that the industry is packing mixed colors of onions, primarily in Idaho, Oregon, Washington, and Texas. In addition, Marketing Order 958 for Idaho and Oregon Onions, administrated by the Idaho-Eastern Oregon Onion Committee, was amended November, 2011, to allow pearl onion packs and experimental shipments of mixed colors. Furthermore, in a May 2012 meeting with the Marketing Order Administration Division, AMS was informed that Washington State, which is outside of marketing order 958, has packed mixed colors of larger Walla Walla type onions for Canada. Currently, the U.S. onion standards do not permit mixing colors in the same pack. The proposed revision will provide the flexibility for shippers and packers to do so. AMS believes that permitting mixed colors when designated as a specialty or mixed pack will facilitate the marketing of onions by aligning the standards with current marketing practices. Therefore, AMS proposes to amend the similar varietal characteristic requirement for:

Onions Other Than BGG and Creole Type in Sections 51.2830, 51.2831, and 51.2832, which affects the U.S. No. 1, U.S. Export No. 1, and U.S Commercial grades, by adding "except color when designated as a specialty or mixed pack." Likewise, AMS proposes to amend the one type requirement in Section 51.2835, which affects the U.S. No. 2 grade, by adding "except when designated as a specialty or mixed pack."

Bermuda-Granex-Grano (BGG) Type Onions in Sections 51.3195 and 51.3197, which affects the U.S. No. 1, U.S. Combination, and U.S. No. 2 grades, by adding "except color when designated as a specialty or mixed pack."

Comments Invited

AMS proposes to amend the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type) and the United States Standards for Grades of Bermuda-Granex-Grano Type Onions. This rule provides for a 60-day comment period for interested parties to comment on the proposed revisions in the standards.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and record keeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is proposed to be amended as follows:

PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. In § 51.2830, paragraph (a) (1) is revised to read as follows:

§ 51.2830 U.S. No. 1.

* * * * *

(a) * * *

(1) Similar varietal characteristics, except color when designated as a specialty or mixed pack;

* * * * *

■ 3. In § 51.2831, paragraph (a) (1) is revised to read as follows:

§ 51.2831 U.S. Export No. 1

* * * * *

(a) * * *

(1) Similar varietal characteristics, except color when designated as a specialty of mixed pack;

* * * * *

■ 4. In § 51.2832, paragraph (a) (1) is revised to read as follows:

§ 51.2832 U.S. Commercial

* * * * *

(a) * * *

(1) Similar varietal characteristics, except color when designated as a specialty or mixed pack;

* * * * *

■ 5. In § 51.2835, paragraph (a) (1) is revised to read as follows:

§ 51.2835 U.S. No. 1 Boilers

* * * * *

(a) * * *

(1) One type, except when designated as a specialty or mixed pack;

* * * * *

■ 6. In § 51.3195, paragraph (a) (1) is revised to read as follows:

§ 51.3195 U.S. No. 1

* * * * *

(a) * * *

(1) Similar varietal characteristics, except color when designated as a specialty or mixed pack;

* * * * *

■ 7. In § 51.3197, paragraph (a) (1) is revised to read as follows:

§ 51.3197 U.S. No. 2

* * * * *

(a) * * *

(1) Similar varietal characteristics, except color when designated as a specialty or mixed pack;

* * * * *

Dated: August 16, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20481 Filed 8–21–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–13–0011; NOP–13–01PR]

RIN 0581–AD33

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances (Crops and Processing)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA's) National List of Allowed and Prohibited Substances (National List) to reflect recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on May 25, 2012 and October

18, 2012. The recommendations addressed in this proposed rule pertain to establishing exemptions (uses) for one substance in organic crop production and two substances in organic processing. Consistent with the recommendations from the NOSB, this proposed rule would add the following substances, along with any restrictive annotations, to the National List: biodegradable biobased mulch film; *Citrus hystrix*, leaves and fruit; and curry leaves (*Murraya koenigii*). This action also proposes a new definition for biodegradable biobased mulch film. This proposed rule would also remove two listings for nonorganic agricultural products on the National List, hops (*Humulus lupulus*) and unmodified rice starch, as their use exemptions expired on January 1, 2013, and June 21, 2009, respectively.

DATES: Comments must be received by October 21, 2013.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646-So., Ag Stop 0268, Washington, DC 20250–0268.

Instructions: All submissions received must include the docket number AMS–NOP–13–0011; NOP–13–01PR, and/or Regulatory Information Number (RIN) 0581–AD32 for this rulemaking. You should clearly indicate the topic and section number of this proposed rule to which your comment refers. You should clearly indicate whether you support the action being proposed for the substances in this proposed rule. You should clearly indicate the reason(s) for your position. You should also supply information on alternative management practices, where applicable, that support alternatives to the proposed action. You should also offer any recommended language change(s) that would be appropriate to your position. Please include relevant information and data to support your position (e.g. scientific, environmental, manufacturing, industry, impact information, etc.). Only relevant material supporting your position should be submitted. All comments received will be posted without change to *http://www.regulations.gov.*

AMS is particularly interested in comments regarding the applicability of the proposed compostability standards for biodegradable biobased mulch film, and whether guidance on management practices is necessary to prevent mulch film from accumulating in fields.

Document: For access to the document to read background documents or comments received, go to *http://www.regulations.gov.* Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2646-South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established, within the National Organic Program (NOP) (7 CFR part 205), the National List regulations in sections 205.600 through 205.607. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501–6522), and USDA organic regulations, in section 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be on the National List. Under the authority of the OFPA, the National List can be amended by the Secretary based on proposed amendments developed by the NOSB.

Since established, AMS has published multiple amendments to the National List beginning on October 31, 2003 (68 FR 61987). AMS published the most recent amendment to the National List on September 27, 2012 (77 FR 59287).

This proposed rule would amend the National List to reflect three recommendations submitted to the Secretary by the NOSB on May 25, 2012 (*Citrus hystrix* leaves and fruit and curry leaves (*Murraya koenigii*)) and October 18, 2012 (biodegradable biobased mulch film). Based upon their evaluation of petitions submitted by industry participants, public comments, market surveillance, and review of technical reports, the NOSB recommended that the Secretary add one substance (biodegradable biobased mulch film) to section 205.601 of the National List for organic crop production and add two substances to section 205.606 (*Citrus hystrix* leaves and fruit and curry leaves (*Murraya koenigii*)) for organic processing. This rule would also remove listings for two substances (hops and unmodified rice starch) as their use exemptions have expired. The exemptions for the use of each new substance in organic crop production and handling were evaluated by the NOSB using the criteria specified in OFPA (7 U.S.C. 6517–6518). In addition, the amendments for two new substances proposed for organic handling were also evaluated by the NOSB using NOP criteria on commercial availability (72 FR 2167).

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments to designated sections of the USDA organic regulations:

Section 205.2 Terms defined.

Section 205.601 Synthetic substances allowed for use in organic crop production.

This proposed action would amend sections 205.2 and 205.601 by adding the following new definition and new substance to the National List for organic crop production.

Biodegradable Biobased Mulch Film

Biodegradable biobased mulch film was petitioned to the National List in January 2012 for use as synthetic mulch for organic crop production.[1] This substance is also alternatively called "bioplastic mulch."

Biodegradable biobased mulch film is used as an alternative to petroleum-based plastic mulches that do not biodegrade. Traditional plastic mulches require removal at the end of the growing or harvest season under OFPA and the USDA organic regulations (7 U.S.C. 6508; §§ 205.206(c)(6) and 205.601(b)(2)(ii)). Biodegradable biobased mulch film is applied to agricultural fields as a thin plastic layer and is left in the field to biodegrade. Like traditional plastic mulches,

[1] Petition is available on NOP Web site in Petitioned Substances Database under "B " at *http://www.ams.usda.gov/NOP.NationalList.*

biodegradable biobased mulch film is used to cover the soil, modify soil temperatures, retain soil moisture, and help control weeds and insect problems.[2]

Mulch film may be made from a variety of degradable polymers, including polylactic acid (PLA), polyhydroxyalkanoates (PHA), and aliphatic-aromatic copolymers (AAC). Some biodegradable mulch films are made from biological sources (i.e., biobased), and some are derived from fossil fuel sources.[3]

At its October 15–18, 2012 meeting in Providence, RI, the NOSB recommended that biodegradable biobased mulch film be added to the National List, with restrictions, for use in organic crop production. The NOSB evaluated biodegradable biobased mulch film against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that the substance is consistent with the OFPA evaluation criteria.

The NOSB indicated in its recommendation that the use of this substance is an opportunity to reduce landfilling of traditional plastic mulches without sacrificing organic farming principles.

The regulatory text recommended by the NOSB is provided in Table 1. The NOSB indicated in its recommendation that mulch film must meet certain criteria for biodegradability, compostability, and biobased content (Criteria A and B in Table 1). In addition, the NOSB recommended restrictions on the types of materials allowed for the production of biobased mulch film (Criterion C). The NOSB also indicated that growers must take appropriate actions to ensure complete degradation (Criterion D). The NOSB indicated that criteria A through C are intended to apply to certifying agents and material evaluation programs that will determine allowed products. Criterion D was intended to refer to the grower's responsibility.

As part of this recommendation, the NOSB also proposed the following definition for the new term biobased: "Organic material in which carbon is derived from a renewable resource via biological processes. Biobased materials include all plant and animal mass derived from carbon dioxide recently fixed via photosynthesis, per definition of a renewable resource (ASTM)."[4] The NOSB recommended that the term "biobased" be included in order to specifically prohibit products derived from petroleum, such as those made from aliphatic-aromatic copolymers.

The Secretary has reviewed and proposes to accept the NOSB's recommendation, with some modifications. Table 1 provides a comparison of the NOSB's recommended regulatory text and the action proposed under this rule.

This proposed rule would amend section 205.2 (Terms defined) by adding a new definition for "biodegradable biobased mulch film" to section 205.2 of the USDA organic regulations.

This action proposes to define biodegradable biobased mulch film as a synthetic mulch that meets the following criteria: (1) Meets the compostability standards of ASTM D6400 or D6868, or of other equivalent international standards, i.e., EN 13432, EN 14995, or ISO 17088; (2) Demonstrates at least 90% biodegradation absolute or relative to microcrystalline cellulose in less than two years, in soil, according to ISO 17556 or ASTM D5988 testing methods; and (3) Must be biobased with content determined using ASTM D6866 testing method.[5]

This proposed rule would also add the substance "biodegradable biobased mulch film," with restrictions, to new subparagraph (b)(2)(iii) of section 205.601. The new listing would read as follows: "Biodegradable biobased mulch films as defined in section 205.2. Must be produced without organisms or feedstock derived from excluded methods."

The NOSB recommended that the standards for compostability, biodegradation, and biobased content be included at subparagraph (b)(2)(iii) of section 205.601. AMS proposes to include the references to these standards within a new definition at section 205.2 in order to streamline the listing of this substance and limit the number of subparagraph levels on the National List.

TABLE 1—COMPARISON OF NOSB RECOMMENDATION AND AMS PROPOSED ACTION FOR BIODEGRADABLE BIOBASED MULCH FILM

Section	NOSB Recommendation	AMS Proposed action
205.2	Add the following new definition to § 205.2: *Biobased.* Organic material in which carbon is derived from a renewable resource via biological processes. Biobased materials include all plant and animal mass derived from carbon dioxide recently fixed via photosynthesis, per definition of a renewable resource (ASTM).	Add the following new definition to § 205.2: *Biodegradable Biobased Mulch Film.* A synthetic mulch film that meets the following criteria: (1) Meets the compostability standards of ASTM D6400 or D6868, or of other equivalent international standards, i.e., EN 13432, EN 14995, or ISO 17088; (2) Demonstrates at least 90% biodegradation absolute or relative to microcrystalline cellulose in less than two years, in soil, according to ISO 17556 or ASTM D5988 testing methods; and (3) Must be biobased with content determined using ASTM D6866 testing method.
205.601	Add the following substance to new subparagraph (iii) of § 205.601(b)(2): (b) As herbicides, weed barriers, as applicable (2) Mulches (iii) Biodegradable biobased mulch films to be reviewed meet the following criteria:	Add the following substance to new subparagraph (iii) of § 205.601(b)(2): (b) As herbicides, weed barriers, as applicable (2) Mulches. (iii) Biodegradable biobased mulch film as defined in § 205.2. Must be produced without organisms or feedstock derived from excluded methods.

[2] Technical Evaluation Report, Biodegradable Mulch Film Made from Bioplastics, August 2, 2012. Available on the NOP Web site at *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5100029.*

[3] *Ibid.*

[4] ASTM refers to ASTM International, formerly known as the American Society for Testing and Materials (ASTM), *http://www.astm.org.*

[5] ASTM refers to ASTM International, formerly known as the American Society for Testing and Materials (ASTM), *http://www.astm.org.* EN refers to the European Committee for Standardization, *http://www.cen.eu.* ISO refers to the International Organization for Standardization, *http://www.iso.org.*

TABLE 1—COMPARISON OF NOSB RECOMMENDATION AND AMS PROPOSED ACTION FOR BIODEGRADABLE BIOBASED MULCH FILM—Continued

Section	NOSB Recommendation	AMS Proposed action
	(A) Completely biodegradable as shown by: (1) Meeting the requirements of ASTM Standard D6400 or D6868 specifications, or of other international standard specifications with essentially identical criteria, i.e. EN 13432, EN 14995, ISO 17088; and (2) Showing at least 90% biodegradation in soil absolute or relative to microcrystalline cellulose in less than two years, in soil, tested according to ISO 17556 or ASTM 5988; (B) Must be biobased with content determined using the ASTM D6866 method; (C) Must be produced without organisms or feedstock derived from excluded methods; and (D) Grower must take appropriate actions to ensure complete degradation.	

The proposed definition for "biodegradable biobased mulch film" includes the third-party standards for compostability, biodegradation, and biobased content which are included in the NOSB recommendation. These standards are summarized in Table 2. Each standard provides a reference for certifying agents and material evaluation programs to verify that biodegradable biobased much film meet certain requirements for compostability, biodegradability, and biobased content.

AMS is specifically interested in comments regarding the compostability standards included in the definition. AMS has noted that when the substance is used as recommended by the NOSB (i.e., as mulch on the surface of the soil), it is not composted according to the standards for compost under section 205.203(c) of the USDA organic regulations. In addition, the NOSB did not consider or recommend the addition of biodegradable biobased mulch film to the list of allowed synthetic compost feedstocks at section 205.601(c). This proposed action includes the compostability standards recommended by the NOSB, but AMS is interested in comments on the applicability of these standards for the intended use of the petitioned material. AMS is also interested in comments on whether the two criteria for biodegradation and biobased content, without the criteria for compostability, would be sufficient for review of this substance.

TABLE 2—TABLE OF APPLICABLE STANDARDS FOR COMPOSTABILITY, BIODEGRADATION, AND BIOBASED CONTENT

Standard	Title	Criteria
ASTM D6400	Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities.	Compostability.
ASTM D6868	Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities.	Compostability.
EN 13432	Proof of compostability of plastic products	Compostability.
EN 14995	Plastics—Evaluation of compostability—Test scheme and specifications	Compostability.
ISO 17088	Specifications for compostable plastics	Compostability.
ISO 17556	Plastics—Determination of the ultimate aerobic biodegradability of plastic materials in soil by measuring the oxygen demand in a respirometer or the amount of carbon dioxide evolved.	Biodegradability.
ASTM D5988	Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials in Soil.	Biodegradability.
ASTM D6866	Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.	Biobased Content.

AMS noted that the NOSB did not recommend a minimum amount of biobased content for biodegradable biobased mulch films. AMS considered whether a minimum should be included in order to ensure that approved products will derive most of their content from biological sources, as was intended by the NOSB. AMS consulted with the USDA BioPreferred program to inquire whether they have a specific category established for biodegradable mulch film products, since product categories in the USDA BioPreferred program include standards (i.e., minimums) for products' biobased content.[6] The USDA BioPreferred program indicated that they do not have a specific product category for biobased mulch film, and that mulch film does not fall within their categories of "Mulch and Compost Materials"[7] or "Films—Non-Durable."[8] (Manufacturers of biobased mulch film who wish to certify this product under the USDA BioPreferred program would classify it in an "undesignated" product category; products in this category must contain a minimum of 25% biobased content as measured by the standard test

[6] USDA BioPreferred® Program product categories are available at *http://www.biopreferred.gov/ProductCategories.aspx*

[7] Established at 7 CFR 2902.56; Final Rule published October 18, 2010; 75 FR 63695.

[8] Established at 7 CFR 2902.27; Final Rule published May 14, 2008; 73 FR 27958.

method.) AMS understands that biobased mulch films used by organic producers will need to be derived primarily from biobased sources in order to meet the requirements for biodegradation and compostability, so we have not proposed a minimum biobased content requirement for mulch film. Biodegradable mulch films that are not biobased, e.g., derived from fossil fuel sources, would not be permitted.

AMS considered the definition for "biobased" that was recommended by the NOSB, and we have not proposed the addition of this term to section 205.2. Instead, AMS proposed a new definition for "biodegradable biobased mulch film" that incorporates the NOSB's intent of limiting the use of this substance to biobased products by including a testing standard for biobased content. The proposed new term "biodegradable biobased mulch film" indicates that this substance must be biobased with content determined using ASTM D6866 testing method. Since this testing method has been previously established for biobased materials using an existing definition for "biobased," AMS determined it was not necessary to add a separate definition for "biobased" to the USDA organic regulations.

AMS also considered whether the new definition for "biodegradable biobased mulch film" may raise questions as to whether certain types of paper mulch are intended to be included in the new definition. Specifically, the petition describes a type of paper mulch "comprised of kraft paper coated with cured vegetable oil-based resins," and indicates that these materials are not intended to be included within its scope. In addition, these materials were also not considered a part of the petition during the NOSB review. As such, AMS does not consider these paper mulches to fall within the new definition of "biodegradable biobased mulch film," since they were not included within the scope of the petition and because these products are not "films."[9] This action is also not intended to define newspaper or other recycled paper as "biodegradable biobased mulch films." The use of newspaper or other recycled paper, without glossy or colored inks, will continue to be allowed as allowed synthetic mulch under the current listing at section 205.601(b)(2)(i) without the additional testing requirements for biodegradable biobased mulch film outlined under the new definition at section 205.2.

The NOSB also recommended that biodegradable biobased mulch film must meet the following criteria: "Must be produced without organisms or feedstocks derived from excluded methods." AMS has reviewed this language and has incorporated the text into the listing proposed at section 205.601.

The NOSB also recommended the following additional text for the listing for biodegradable biobased mulch film: "Grower must take appropriate actions to ensure complete degradation." AMS has reviewed this language and has not incorporated this text into the proposed listing as we believe the intent of this text is adequately covered under other sections of the USDA organic regulations. For example, section 205.200 requires that production practices maintain or improve the natural resources of the operation, including soil and water quality. In addition, section 205.203 requires that the producer select and implement practices that maintain or improve the physical, chemical, and biological condition of soil. Thus, the use of film in a manner that causes it to accumulate in the field and not biodegrade over time would not be compliant with the existing requirements at sections 205.200 and 205.203.

The NOSB indicated that the proposed language was intended to clarify the grower's responsibility and what the certifying agent must evaluate. The NOSB indicated that NOP, in conjunction with the NOSB, should develop guidance that explains proper practices for use of biodegradable biobased mulch film. In addition, the NOSB indicated that it expects the inspection process and certification review to verify that biodegradation of the mulch film is occurring so that it does not accumulate in the fields where it is used.

AMS understands that the complete degradation of mulch film may be impacted by a number of factors, including climate, soil type, irrigation, and other production practices. AMS has not determined if there is a demonstrated need for guidance on the use of mulch film at this time. We understand that guidance may be needed in the future depending on the prevalence of adoption of use of mulch film by organic growers and any problems observed by certifying agents with degradation on organic fields. AMS is interested in comments on whether guidance on management practices is necessary at this time to prevent mulch film from accumulating in fields.

Section 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients in or on Processed Products Labeled as "Organic."

This proposed rule would amend section 205.606 by removing paragraph (l), removing subparagraph (w)(2), and redesignating subparagraph (w)(3) as (w)(2), to remove the following substances from the National List:

Hops (Humulus lupulus). Hops (Humulus lupulus) was added to the National List on June 27, 2007 (72 FR 35137), to enable brewers to produce organic beer with conventionally grown hops in the absence of a commercially available supply of organically grown hops. In December 2009, an organic hop grower association petitioned the NOSB to remove hops from section 205.606 for the purpose of advancing growth in the organic hops market.[10]

In response to the petition, the NOSB recommended at its October 2010 public meeting that an expiration date of January 1, 2013 be added to the listing for hops. This recommendation was accepted by the Secretary and was implemented as a Final Rule published June 27, 2012 (77 FR 33290). The listing was amended to read as follows: Hops (*Humulus lupulus*) until January 1, 2013. This action would remove the expired listing for hops (*Humulus lupulus*) from section 205.606 at paragraph (l), as the use exemption for this substance expired on January 1, 2013. Removal of this substance has no new regulatory effect.

Unmodified Rice Starch

This proposed rule would amend section 205.606 of the National List by removing the expired exemption for "rice starch, unmodified (CAS # 977000–08–0)," referred to below as "unmodified rice starch." Unmodified rice starch was petitioned to the National List on February 14, 2007 as a gelation agent used in combination with other thickeners. The NOSB recommended adding unmodified rice starch to the National List and also indicated that the listing should expire two years after the date of publication of the final rule. The NOSB recommendation was accepted by the Secretary, and unmodified rice starch was added to the National List effective June 21, 2007 by publication of an interim final rule on June 27, 2007 (72 FR 35137). The listing reads as follows:

[9] The biodegradable films intended by the petition are described by the petitioner as "produced from bioplastics and meet standards for aerobic biodegradation in soil."

[10] Petition to remove hops. Available in Petitioned Substances Database, under "H," available at the NOP Web site at *http://www.ams.usda.gov/NOPNationalList* and *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5085449.*

(2) Rice starch, unmodified (CAS # 977000–08–0)—for use in organic handling until June 21, 2009. This proposed rule would remove the listing for unmodified rice starch that expired on June 21, 2009. Removal of this substance has no new regulatory effect.

This proposed rule would further amend section 205.606 by redesignating paragraphs (e) through (aa) as (g) through (bb), respectively; and redesignating paragraph (d) as paragraph (e) for the purposes of adding the following new substances at paragraphs (d) and (f):

Citrus Hystrix, Leaves and Fruit

Leaves and fruit of *Citrus hystrix* were petitioned in August 2011 for use as a nonorganic agricultural ingredient in or on processed products labeled as "organic." [11] *C. hystrix* leaves and fruit are traditional ingredients in Lao, Thai, and other Southeast Asian cuisines. The tree of *C. hystrix* is easily identified by its distinctively shaped double leaves and the fruit is known for its bumpy skin. Both the leaves and fruit impart a unique intense flavor and aroma in foods due to their high concentration of essential oils. *C. hystrix* leaves and fruit are harvested, washed, and can be used fresh, dried, or frozen.

At its May 22–25, 2012, meeting in Albuquerque, NM, the NOSB accepted public comment and recommended adding *C. hystrix* leaves and fruit to the National List for use in organic handling as a non-organic agricultural ingredient where the organic form is commercially unavailable.[12] In this open meeting, the NOSB evaluated *C. hystrix* leaves and fruit against evaluation criteria established by 7 U.S.C. 6517 and 6518 of the OFPA evaluation criteria and NOP commercial availability criteria (72 FR 2167). Therefore in response to the NOSB recommendation regarding the use of *C. hystrix* in organic handling, the Secretary proposes to amend section 205.606 of the National List regulations to allow *C. hystrix* as a nonorganically produced agricultural product allowed as an ingredient in or on processed products labeled as "organic."

Curry Leaves *(Murraya koenigii)*

Curry leaves were petitioned in August 2011 for use as a nonorganic agricultural ingredient in or on processed products labeled as "organic." [13] Curry leaves, which are also known as sweet neem leaves, are extremely fragrant and are an important ingredient commonly used in Indian, Sri Lankan, Malay and other Southeast Asian cuisines. Curry leaves impart a unique flavor and fragrance which cannot be substituted with other ingredients. Curry leaves are harvested from curry trees, washed, and can be used fresh, dried, or frozen.

At its May 22–25, 2012, public meeting in Albuquerque, NM, the NOSB accepted public comment and recommended adding curry leaves (*Murraya koenigii*) to the National List for use in organic handling as a nonorganic agricultural ingredient when organic curry leaves are commercially unavailable.[14] The NOSB evaluated curry leaves (*Murraya koenigii*) against evaluation criteria established by 7 U.S.C. 6517 and 6518 of the OFPA evaluation criteria and NOP commercial availability criteria (72 FR 2167). Therefore in response to the NOSB recommendation regarding the use of curry leaves (*Murraya koenigii*) in organic handling, the Secretary proposes to amend section 205.606 of the National List regulations to allow curry leaves (*Murraya koenigii*) as a nonorganically produced agricultural product allowed as an ingredient in or on processed products labeled as "organic." The listing is proposed as the common name of the ingredient, with the scientific species name in parentheses, to be consistent with the listing of other agricultural products on National List.

III. Related Documents

Two notices were published regarding meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** notices: (1) 77 FR 21067, April 9, 2012 (curry leaves and *C. hystrix*); and (2) 77 FR 52679, August 30, 2012 (biodegradable biobased mulch film).

The expiration date of January 1, 2013, for the listing for hops was added to the National List on June 27, 2012 by a final rule (77 FR 33290) published in the **Federal Register** notice on June 6, 2012.

The listing and expiration date of June 21, 2009 for unmodified rice starch was added to the National List on June 21, 2007, by an interim final rule (72 FR 35137) published in the **Federal Register** on June 27, 2007.

Additional information on substances, including petitions, technical reports, and NOSB recommendations, are available on the NOP Web site at *http://www.ams.usda.gov/NOPNational List.*

IV. Statutory and Regulatory Authority

The OFPA, as amended, (7 U.S.C. 6501–6522), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under section 205.607 of the NOP regulations. The current petition guidelines (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov/AMSv1.0/nop.*

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in the OFPA (7 U.S.C. 6514(b)). States are also preempted by the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification

[11] Petition is available in Petitioned Substances Database, under "C," at *http://www.ams.usda.gov/NOPNationalList.*

[12] NOSB Formal Recommendation for *Citrus hystrix* leaves and fruit, May 25, 2012. *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5098918.*

[13] Petition is available in Petitioned Substances Database, under "C," at *http://www.ams.usda.gov/NOPNationalList.*

[14] NOSB Formal Recommendation for Curry Leaves, May 25, 2012, *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5098915.*

program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to the OFPA (7 U.S.C. 6519(f)), this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of EPA under the FIFRA (7 U.S.C. 136–136(y)).

The OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. According to USDA, National Agricultural Statistics Service (NASS), certified organic acreage exceeded 3.5 million acres in 2011.[15] According to NOP's Accreditation and International Activities Division, the number of certified U.S. organic crop and livestock operations totaled over 17,281 in 2011. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA. The procedures for producing and handling certified apiculture products will remain essentially the same under this proposed rule as they have been since ACAs began to certify apiculture products organic under the livestock regulations. The difference under the proposed rule is that the regulation will be more specific, and is tailored to apiculture production and handling requirements.

U.S. sales of organic food and non-food have grown from $1 billion in 1990 to $31.4 billion in 2011. Sales in 2011 represented 9.5 percent growth over 2010 sales.[16] In addition, the USDA has 86 accredited certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA. Certifying agents reported approximately 29,000 certified operations worldwide in 2011.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, and Chapter 35.

E. Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

F. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted by the NOSB to the Secretary to add three substances on the National List and to remove two expired listings from the National List. A 60-day period for interested persons to comment on this rule is provided and is deemed appropriate.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501—6522.

■ 2. Section 205.2 is amended by adding one new term in alphabetical order to read as follows:

§ 205.2 Terms defined.

* * * * *

Biodegradable biobased mulch film. A synthetic mulch film that meets the following criteria:

(1) Meets the compostability standards of ASTM D6400 or D6868, or of other equivalent international standards, i.e., EN 13432, EN 14995, or ISO 17088;

(2) Demonstrates at least 90% biodegradation absolute or relative to microcrystalline cellulose in less than two years, in soil, according to ISO 17556 or ASTM D5988 testing methods; and

(3) Must be biobased with content determined using ATM D6866 testing method.

* * * * *

■ 3. Section 205.601 is amended by adding paragraph (b)(2)(iii) to read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(b) * * *

(2) * * *

(iii) Biodegradable biobased mulch film as defined in § 205.2. Must be produced without organisms or

[15] U.S. Department of Agriculture, National Agricultural Statistics Service. October 2012. 2011 Certified Organic Productions Survey. *http://usda01.library.cornell.edu/usda/current/OrganicProduction/OrganicProduction-10-04-2012.pdf.*

[16] Organic Trade Association. 2012. Organic Industry Survey. *www.ota.com.*

feedstock derived from excluded methods.

* * * * *

■ 4. Section 205.606 is amended by:
■ A. Removing paragraph (l);
■ B. Removing paragraph (w)(2);
■ C. Redesignating paragraph (w)(3) as (w)(2);
■ D. Redesignating paragraphs (e) through (aa) as (g) through (bb) respectively;
■ E. Redesignating paragraph (d) as paragraph (e); and
■ F. Adding new paragraphs (d) and (f).
The additions read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic."

* * * * *

(d) *Citrus hystrix,* leaves and fruit.

* * * * *

(f) Curry leaves (*Murraya koenigii*).

* * * * *

Dated: August 16, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20476 Filed 8–21–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0723; Notice No. 25–13–03–SC]

Special Conditions: Boeing Model 777–200, –300, and –300ER Series Airplanes; Rechargeable Lithium Ion Batteries and Battery Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Model 777–200, –300, and –300ER series airplanes. These airplanes as modified by the ARINC Aerospace Company will have a novel or unusual design feature, specifically the rechargeable lithium ion batteries and battery system that will be used on an International Communications Group (ICG) ePhone cordless cabin handset. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before October 7, 2013.

ADDRESSES: Send comments identified by docket number FAA–2013–0723 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On August 10, 2012, the ARINC Aerospace Company applied for a supplemental type certificate for installing equipment that uses rechargeable lithium ion batteries and battery systems in the Boeing Model 777–200, –300, and –300ER series airplanes. The Model 777–200 series airplanes are long-range, wide-body, twin-engine jet airplanes with a maximum capacity of 440 passengers. The Boeing Model 777–300 and 777–300ER series airplanes have a maximum capacity of 550 passengers. The Model 777–200, –300, and –300ER series airplanes have fly-by-wire controls, fully software-configurable avionics, and fiber-optic avionics networks.

Existing airworthiness regulations did not anticipate the use of lithium ion batteries and battery systems on aircraft. Lithium ion batteries and battery systems have new hazards that were not contemplated when the existing regulations were promulgated. In Title 14, Code of Federal Regulations (14 CFR) 25.1353, the FAA provided an airworthiness standard for lead acid batteries and nickel cadmium batteries. These special conditions provide an equivalent level of safety as that of the existing regulation.

Type Certification Basis

Under the provisions of 14 CFR 21.101, the ARINC Aerospace Company must show that the Boeing Model 777–200, –300, and –300ER series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE are as follows: part 25, as amended by Amendments 25–1 through 25–82, except for § 25.571(e)(1), which remains at Amendment 25–71 level. In addition, the certification basis includes special conditions and exemptions that are not

relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200, –300, and –300ER series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–200, –300, and –300ER series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 777–200, –300, and –300ER series airplanes will incorporate the following novel or unusual design features: an International Communications Group (ICG) ePhone cordless cabin handset that will use a rechargeable lithium ion battery and battery system. Lithium ion batteries and battery systems have certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel cadmium and lead acid rechargeable batteries. Rechargeable lithium ion batteries and battery systems are considered to be a novel or unusual design feature in transport category airplanes, with respect to the requirements in § 25.1353.

Discussion

The current regulations governing installation of batteries in large transport category airplanes were derived from Civil Air Regulations (CAR) part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. The new battery requirements, § 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures which led to additional rulemaking affecting large transport category airplanes as well as small airplanes. On September 1, 1977 and March 1, 1978, respectively, the FAA issued § 25.1353(c)(5) and (c)(6), governing nickel cadmium battery installations on large transport category airplanes.

The proposed use of lithium ion batteries and battery systems for equipment and systems on the Boeing Model 777–200, –300, and –300ER series airplanes has prompted the FAA to review the adequacy of these existing regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of lithium ion batteries and battery systems that could affect the safety and reliability of the airplanes with the ICG ePhone cordless cabin handset lithium ion battery installations.

At present, there is limited experience with use of rechargeable lithium ion batteries and battery systems in applications involving commercial aviation. However, other users of this technology, ranging from wireless telephone manufacturers to the electric vehicle industry, have noted safety problems with lithium ion batteries and battery systems. These problems include overcharging, over-discharging, and flammability of cell components.

1. Overcharging

In general, lithium ion batteries and battery systems are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (i.e., thermal runaway) than their nickel cadmium or lead acid counterparts. This condition is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway due to overcharging increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

2. Over-Discharging

Discharge of some types of lithium ion batteries and battery systems beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flightcrews as a means of checking battery status—a problem shared with nickel cadmium batteries.

3. Flammability of Cell Components

Unlike nickel cadmium and lead acid batteries, some types of lithium batteries and battery systems use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire, if there is a breach of the battery container.

These problems experienced by users of lithium ion batteries and battery systems raise concern about the use of these batteries in commercial aviation. The intent of the proposed special conditions is to establish appropriate airworthiness standards for lithium ion battery installations in the Boeing 777–200, –300, and –300ER series airplanes and to ensure, as required by §§ 25.1309 and 25.601, that these lithium ion batteries and battery systems are not hazardous or unreliable.

For the reasons discussed above, these special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–200, –300, and –300ER series airplanes. Should the ARINC Aerospace Company apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00001SE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 777–200, –300, and –300ER

series airplanes modified by the ARINC Aerospace Company.

These proposed special conditions require that (1) all characteristics of the rechargeable lithium ion batteries and battery systems and their installation that could affect safe operation of the Boeing Model 777–200, –300, and –300ER series airplanes are addressed, and (2) appropriate instructions for continued airworthiness, which include maintenance requirements, are established to ensure the availability of electrical power from the batteries when needed.

In lieu of the requirements of 14 CFR 25.1353(b)(1) through (b)(4) at Amendment 25–113, the following special conditions apply. Rechargeable lithium ion batteries and battery systems on Boeing Model 777–200, –300, and –300ER series airplanes must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition and during any failure of the charging or battery monitoring system not shown to be extremely remote. The lithium ion batteries and battery systems must preclude explosion in the event of those failures.

(2) Design of the lithium ion batteries and battery systems must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any lithium ion batteries and battery systems in normal operation, or as the result of any failure of the battery charging system, monitoring system, or battery installation that is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Installations of lithium ion batteries and battery systems must meet the requirements of § 25.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any lithium ion batteries and battery systems may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more severe failure condition, in accordance with § 25.1309(b) and applicable regulatory guidance.

(6) Each lithium ion battery and battery system must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Lithium ion batteries and battery systems must have a system to control the charging rate of the battery automatically, so as to prevent battery overheating or overcharging, and:

(i) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

(ii) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any lithium ion battery and battery system whose function is required for safe operation of the airplane must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The instructions for continued airworthiness required by § 25.1529 must contain maintenance requirements to assure that the lithium ion batteries are sufficiently charged at appropriate intervals specified by the battery manufacturer and the equipment manufacturer. The instructions for continued airworthiness must also contain procedures for the maintenance of batteries in spares storage to prevent the replacement of batteries with batteries that have experienced degraded charge retention ability or other damage due to prolonged storage at a low state of charge. Replacement batteries must be of the same manufacturer and part number as approved by the FAA. Precautions should be included in the instructions for continued airworthiness maintenance instructions to prevent mishandling of the rechargeable lithium ion batteries and battery systems, which could result in short-circuit or other unintentional impact damage caused by dropping or other destructive means that could to result in personal injury or property damage.

Note 1: The term "sufficiently charged" means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where there is a reduction in the ability to charge and retain a full charge. This reduction would be greater than the reduction that may result from normal operational degradation.

Note 2: These special conditions are not intended to replace § 25.1353(b) at Amendment 25–113 in the certification basis of Boeing Model 777–200, –300, and–300ER series airplanes. These special conditions apply only to rechargeable lithium ion batteries and battery systems and their installations. The requirements of § 25.1353(b) at Amendment 25–113 remain in effect for batteries and battery installations on Boeing Model 777–200, –300, and –300ER series airplanes that do not use rechargeable lithium ion batteries.

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

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–20427 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0449; Airspace Docket No. 13–AEA–8]

Proposed Amendment of Class D and E Airspace, and Establishment of Class E Airspace; Salisbury, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D and Class E airspace, and establish Class E airspace at Salisbury-Ocean City Wicomico Regional Airport, Salisbury, MD, due to the decommissioning of the Salisbury VHF Omnidirectional Radio Range Tactical Air Navigation Aid (VORTAC) and cancellation of the VOR approach. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the airport's geographic coordinates, and change the Class D city designator.

DATES: Comments must be received on or before October 7, 2013.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0449; Airspace Docket No. 13–AEA–8, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see

ADDRESSES section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0449; Airspace Docket No. 13–AEA–8) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2013–0449; Airspace Docket No. 13–AEA–8." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_air traffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class D and Class E airspace at Salisbury-Ocean City Wicomico Regional Airport, Salisbury, MD. Class D airspace and Class E surface area airspace would be amended to within a 4.3-mile radius of the airport. Class E airspace extending upward from 700 feet above the surface would be amended to within a 7-mile radius of the airport. Class E airspace designated as an extension to a Class D surface area airspace would be established within a 4.3-mile radius of the airport, with segments extending 7 miles southeast, northeast, and southwest of the airport. The geographic coordinates of the airport also would be adjusted to coincide with the FAA's aeronautical database. The Class D city designation would be changed from Salisbury-Ocean City Wicomico Regional Airport, MD, to Salisbury, MD.

Class D airspace and Class E airspace designations are published in Paragraph 5000, 6002, 6004, and 6005 respectively, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class D and E airspace at Salisbury-Ocean City Wicomico Regional Airport, Salisbury, MD.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AEA MD D Salisbury, MD [Amended]

Salisbury-Ocean City Wicomico Regional Airport, MD
(Lat. 38°20′25″ N., long. 75°30′34″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Salisbury-Ocean City Wicomico Regional Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AEA MD E2 Salisbury, MD [Amended]

Salisbury-Ocean City Wicomico Regional Airport, MD
(Lat. 38°20′25″ N., long. 75°30′34″ W.)

That airspace extending upward from the surface within a 4.3-mile radius of Salisbury-Ocean City Wicomico Regional Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen.

Paragraph 6004 Class E airspace designated as an extension to a Class D surface area.

* * * * *

AEA MD E4 Salisbury, MD [New]

Salisbury-Ocean City Wicomico Regional Airport, MD
(Lat. 38°20′25″ N., long. 75°30′34″ W.)

That airspace extending upward from the surface within 2.5 miles each side of a 133° bearing from Salisbury-Ocean City Wicomico Regional Airport extending from the 4.3-mile radius of the airport to 7 miles southeast of the airport, and 2.5 miles each side of a 51° bearing from the airport, extending from the 4.3-mile radius of the airport to 7 miles northeast of the airport, and 2.5 miles each side of a 209° bearing from the airport, extending from the 4.3-mile radius of the airport to 7 miles southwest of the airport.

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

* * * * *

AEA MD E5 Salisbury, MD [Amended]

Salisbury-Ocean City Wicomico Regional Airport, MD
(Lat. 38°20′25″ N., long. 75°30′34″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Salisbury-Ocean City Wicomico Regional Airport.

Issued in College Park, Georgia, on August 16, 2013.

Kip B. Johns,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–20514 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0431; Airspace Docket No. 13–ASO–7]

Proposed Establishment of Class E Airspace; Aliceville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Aliceville, AL, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) serving George Downer Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before October 7, 2013.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0431; Airspace Docket No. 13–ASO–7, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0431; Airspace Docket No. 13–ASO–7) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2013–0431; Airspace Docket No. 13–ASO–7." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays, at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Aliceville, AL, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for George Downer Airport. Controlled airspace extending upward from 700 feet above the surface is required for IFR operations within a 7-mile radius of the airport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at George Downer Airport, Aliceville, AL.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

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

* * * * *

ASO AL E5 Aliceville, AL [New]

George Downer Airport, AL
(Lat. 33°06′23″ N., long. 88°11′52″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of George Downer Airport.

Issued in College Park, Georgia, on August 16, 2013.

Kip B. Johns,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–20509 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0664; Airspace Docket No. 13–ANM–22]

Proposed Amendment of Class E Airspace; Cut Bank, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Cut Bank Municipal Airport, Cut Bank, MT. Controlled airspace is necessary to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. The geographic coordinates of the airport would be adjusted in the respective Class E airspace areas. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before October 7, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0664; Airspace Docket No. 13–ANM–22, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0664 and Airspace Docket No. 13–ANM–22) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2013–0664 and Airspace Docket No. 13–ANM–22". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before

taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface area airspace and Class E airspace extending upward from 700/1,200 feet above the surface at Cut Bank Municipal Airport, Cut Bank, MT. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at the airport. The Class E surface area airspace extending from the 4.7-mile radius of the airport would extend from the airport bearing to 11 miles southeast of the airport; the Class E airspace extending upward from 700 feet above the surface within the 7.9-mile radius of the airport would have segments extending from the airport bearing south and southeast of the airport, and within a sector extending upward from 1,200 feet above the surface. Also, the geographic coordinates of the airport would be updated to coincide with the FAA's aeronautical database for the respective Class E airspace areas. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would modify controlled airspace at Cut Bank Municipal Airport, Cut Bank, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM MT E2 Cut Bank, MT [Modified]

Cut Bank Municipal Airport, MT
(Lat. 48°36′30″ N., long. 112°22′34″ W.)

Within a 4.7-mile radius of the Cut Bank Municipal Airport, and within 3.1 miles each side of the 150° bearing of the Cut Bank Municipal Airport extending from the 4.7-mile radius to 11 miles southeast of the airport.

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

* * * * *

ANM MT E5 Cut Bank, MT [Modified]

Cut Bank Municipal Airport, MT
(Lat. 48°36′30″ N., long. 112°22′34″ W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of the Cut Bank Municipal Airport, and within 8.3 miles northeast and 4 miles southwest of the 150° bearing of the Cut Bank Municipal Airport extending from the 7.9-mile radius to 18.4 miles southeast of the airport, and within 2.6 miles each side of the 175° bearing of the Cut Bank Municipal Airport extending from the 7.9-mile radius to 12.6-miles south of the airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°53′00″ N., long. 113°11′00″ W.; to lat. 48°52′00″ N., long. 112°42′00″ W.; to lat. 48°57′00″ N., long. 111°46′00″ W.; to lat. 48°27′00″ N., long. 111°01′00″ W.; to lat. 48°08′00″ N., long. 111°19′00″ W.; to lat. 47°46′00″ N., long. 112°35′00″ W., thence to the point of beginning

Issued in Seattle, Washington, on August 15, 2013.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–20502 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0552; Airspace Docket No. 13–ASO–14]

Proposed Amendment of Class E Airspace; Macon, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Macon, GA, as the Bay Creek NDB has been decommissioned and airspace reconfiguration is necessary for the safety and airspace management of Instrument Flight Rules (IFR) operations at Perry-Houston County Airport. This action also would amend controlled airspace and update the name and geographic coordinates of Macon Downtown Airport and amend controlled airspace for Middle Georgia Regional Airport.

DATES: Comments must be received on or before October 7, 2013.

ADDRESSES: Send comments on this proposed rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0552; Airspace Docket No. 13–ASO–14, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this proposed rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0552; Airspace Docket No. 13–ASO–14) and be submitted in triplicate to the Docket Management System (see "**ADDRESSES**" section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2013–0552; Airspace Docket No. 13–ASO–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface to within a 7.8-mile radius of Middle Georgia Regional Airport, and within a 9.8-mile radius of Perry-Houston County Airport, and within a 7-mile radius of Robins AFB, and within a 8.8-mile radius of Macon Downtown Airport, formerly called Herbert Smart Downtown Airport. Airspace reconfiguration is necessary due to the decommissioning of the Bay Creek NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airports. Also, the geographic coordinates of Macon Downtown Airport would be adjusted to coincide with the FAAs aeronautical database.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that

section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace in the Macon, GA, area.

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

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

* * * * *

ASO GA E5 Macon, GA [Amended]

Middle Georgia Regional Airport, GA
(Lat. 32°41′34″ N., long. 83°38′57″ W.)
Macon Downtown Airport
(Lat. 32°49′18″ N., long. 83°33′43″ W.)
Robins AFB
(Lat. 32°38′25″ N., long. 83°35′31″ W.)
Perry-Houston County Airport
(Lat. 32°30′38″ N., long. 83°46′02″ W.)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Middle Georgia Regional Airport, and within a 8.8-mile radius of Macon Downtown Airport, and within a 7-mile radius of Robins AFB, and within a 9.8-mile radius of Perry-Houston County Airport.

Issued in College Park, Georgia, on August 16, 2013.

Kip B. Johns,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–20504 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0681; Airspace Docket No. 13–AEA–15]

Proposed Amendment of Class E Airspace; Olean, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Olean, NY, as the Olean Non-Directional Beacon (NDB) has been decommissioned, requiring airspace redesign at Cattaraugus County-Olean Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the geographic coordinates of the airport.

DATES: Comments must be received on or before October 7, 2013.

ADDRESSES: Send comments on this proposed rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0681; Airspace Docket No. 13–AEA–15, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0681; Airspace Docket No. 13–AEA–15) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2013–0681; Airspace Docket No. 13–AEA–15." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution

System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface at Cattaraugus County-Olean Airport, Olean, NY. Airspace reconfiguration to within a 10-mile radius of the airport is necessary due to the decommissioning of the Olean NDB, and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. The geographic coordinates of the airport would be adjusted to coincide with the FAAs aeronautical database.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Cattaraugus County-Olean Airport, Olean, NY.

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

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

* * * * *

AEA NY E5 Olean, NY [Amended]

Cattaraugus County-Olean Airport, NY
(Lat. 42°14′28″ N., long. 78°22′17″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Cattaraugus County-Olean Airport.

Issued in College Park, Georgia, on August 16, 2013 .

Kip B. Johns,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–20511 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–13–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Request for Public Comment on a Review Level Alternative Dispute Resolution Program

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Request for comment.

SUMMARY: The Occupational Safety and Health Review Commission invites the public to comment on the potential development of an alternative dispute resolution program at the review level.

DATES: Written comments must be submitted on or before October 21, 2013.

ADDRESSES: Submit all written comments, identified by the title "Settlement Part Public Comment," by mail or hand delivery to John X. Cerveny, Deputy Executive Secretary, Occupational Safety and Health Review Commission, 1120 20th Street NW., Washington, DC 20036–3457, by fax to 202–606–5050, or by email to *fedreg@oshrc.gov*.

FOR FURTHER INFORMATION CONTACT: John X. Cerveny, Deputy Executive Secretary, Occupational Safety and Health Review Commission, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457; Telephone (202) 606–5706; email address: *fedreg@oshrc.gov*.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Review Commission ("Commission") adjudicates contested citations issued by the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") at the trial level before an administrative law judge and, if directed for review, before the Commissioners on appeal. The Commission initiated an alternative dispute resolution ("ADR") program at the trial level, known as the Settlement Part program, in 1999. The Settlement Part program, codified at 29 CFR 2200.120, employs both mandatory and voluntary procedures to promote case settlement. Under the program, an administrative law judge acts as a settlement judge and oversees the ADR process. If a case does not settle, an administrative law judge who did not act as the settlement judge typically hears the case and issues a decision, which may be appealed to the Commissioners at the review level. An ADR program does not currently exist at the Commission's review level, but the Commission is exploring the feasibility of instituting such a program.

At the Commission's request, ADR experts at Indiana University School of Public and Environmental Affairs recently completed a study of the Settlement Part program at the judges' level. Upon studying both empirical data and survey responses from internal and external participants, Indiana University deemed the program "successful" and noted that the Commission "has done an admirable job

addressing an increased caseload within constrained resources while at the same time meeting the expectations of its external stakeholders." In addition to Indiana University's study of the Settlement Part program at the judges' level, the Commission held a public meeting on August 30, 2012, to explore ways to enhance efficiency and effectiveness in resolving cases at the review level. During the public meeting, there were expert panelists and members of the public who spoke in favor of implementing an ADR program at the review level.

In light of the success of the Settlement Part program at the judges' level and the comments received at the public meeting, the Commission is considering creating an ADR program at the review level. At this stage, the Commission seeks public input on whether it should develop such a program and, if so, how the program should operate.

Specifically, the Commission invites public comment on the following list of questions:

1. Should the Commission develop an ADR program at the review level?

a. Why or why not?

b. Do parties have sufficient incentives at the review level to participate in ADR? What are the potential benefits of, and deterrents to, participation in the ADR program at the review level?

c. What types of ADR processes should a potential program incorporate?

2. If an ADR program is developed, should certain types of cases be included or excluded, and how should eligibility for ADR at the review level be determined?

a. Should placement into ADR be decided by a Commission vote?

b. Should participation in an ADR program be mandatory or voluntary?

c. Should the Commission evaluate cases for participation in the ADR program at the review level based on any criteria, such as the total dollar amount of penalties, the number of citation items, the characterization of violations, or any other issues?

d. Regarding cases where the parties participated in the Settlement Part program at the trial level, should the Commission use different criteria when considering these cases for participation in the ADR program at the review level? If these cases are placed into ADR at the review level, should they be treated differently in any way?

e. Is ADR appropriate for cases with pro se parties? If so, should the Commission offer any assistance or guidance to pro se parties in the ADR process?

3. When should the ADR process begin?

a. Should the process begin before or after the Commission issues a briefing notice?

b. If ADR begins after issuance of a briefing notice when parties know what issues the Commission is most interested in, should briefing be suspended during the ADR process so that the parties may avoid briefing costs?

c. Should an ADR program allow flexibility as to when the process starts in each case?

4. Where should dispute resolution proceedings be held?

5. Should telephone or video conferencing be an option for ADR discussions? If so, should its use be limited to certain circumstances?

6. Who should the Commission select to serve as potential third-party neutrals?

a. In addition to possessing ADR training and skills, would third-party neutrals benefit from having subject matter expertise in OSH law or other related fields such as labor law? If so, should third-party neutrals be required to have such expertise?

b. Should the Commission use its own employees as third-party neutrals if they are excluded from any subsequent involvement in cases they participate in as third-party neutrals?

c. Are there any reasons not to use former Commissioners, ALJs, or practitioners as third-party neutrals?

d. Should the Commission seek out third-party neutrals from any other potential source, such as the Federal Mediation and Conciliation Service or regional federal court third-party neutral rosters?

e. Should the parties be able to select the third-party neutral, or reject one the Commission selects?

7. What responsibilities should a third-party neutral have?

a. Should a third-party neutral be able to require parties to file pre-conference confidential statements?

b. Should a third-party neutral have the power to suspend the ADR process and report any misconduct to the Commission, such as a party's failure to be present at a scheduled ADR conference? Should the Commission consider any reported misconduct consistent with Commission Rule 101, 29 CFR 2200.101 (Failure to obey rules)?

c. Should a third-party neutral have the power to require that a representative for each party with full authority to resolve the case be present at an ADR conference?

d. Should the third-party neutral require strict confidentiality of all ADR discussions and any other matters subject to a specific confidentiality agreement?

8. Should a specified amount of time be allotted to the ADR process before a case is returned to conventional proceedings?

a. Should a third-party neutral have the authority to make a request to the Commission to extend the timeframe for the ADR process?

b. If so, should there be defined criteria for granting an extension and/or a specified limit to any extension?

9. What other considerations should the Commission evaluate in determining whether to develop an ADR program at the review level?

The Review Commission welcomes any other comments or suggestions regarding an ADR program at the Commission's review level.

Dated: August 19, 2013.

John X. Cerveny,

Deputy Executive Secretary.

[FR Doc. 2013–20526 Filed 8–21–13; 8:45 am]

BILLING CODE 7600–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DOD–2013–OS–0023]

RIN 0790–AJ03

DoD Privacy Program

AGENCY: Director of Administration and Management, DoD.

ACTION: Proposed rule; amendment.

SUMMARY: This rule updates the established policies, guidance, and assigned responsibilities of the DoD Privacy Program pursuant to The Privacy Act and Office of Management and Budget (OMB) Circular No. A–130; authorizes the Defense Privacy Board and the Defense Data Integrity Board; prescribes uniform procedures for implementation of and compliance with the DoD Privacy Program; and delegates authorities and responsibilities for the effective administration of the DoD Privacy Program.

DATES: Comments must be received by October 21, 2013.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive,

East Tower, Suite 02G09, Alexandria VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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: Samuel P. Jenkins, 703–571–0070.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

a. The need for the regulatory action and how the action will meet that need.

An individual's privacy is a fundamental legal right that must be respected and protected. This regulatory action ensures that DoD's need to collect, use, maintain, or disseminate personally identifiable information (PII) about individuals for purposes of discharging its statutory responsibilities will be balanced against their right to be protected against unwarranted privacy invasions. This regulatory action also describes the rules of conduct and responsibilities of DoD personnel DoD contractors, and DoD contractor personnel to ensure that any PII contained in a system of records that they access and use to conduct official business will be protected so that the security and confidentiality of the information is preserved.

b. Succinct statement of legal authority for the regulatory action (explaining, in brief, the legal authority laid out later in the preamble).

Authority: 5 U.S.C. 552a, OMB Circular No. A–130.

II. Summary of the Major Provisions of the Regulatory Action in Question

This rule:

a. Establishes rules of conduct for DoD personnel and DoD contractors involved in the design, development, operation, or maintenance of any system of records.

b. Establishes appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual about whom information is maintained.

c. Ensures that guidance, assistance, and subject matter expert support are provided to the combatant command privacy officers in the implementation and execution of and compliance with the DoD Privacy Program.

d. Ensures that laws, policies, procedures, and systems for protecting individual privacy rights are implemented throughout DoD.

III. Costs and Benefits

This regulatory action imposes no monetary costs to the Agency or public. The benefit to the public is the accurate reflection of the Agency's Privacy Program to ensure that policies and procedures are known to the public. The revisions to this rule are part of DoD's retrospective plan under EO 13563 completed in August 2011. DoD's full plan can be accessed at *http://exchange.regulations.gov/exchange/topic/eo-13563.*

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

It has been certified that 32 CFR part 310 does not:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

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

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 310 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

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

It has been certified that 32 CFR part 310 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

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

It has been certified that 32 CFR part 310 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 310 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

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

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly 32 CFR part 310 is proposed to be amended to read as follows:

PART 310—[AMENDED]

■ 1. The authority citation for 32 CFR part 310 is revised to read as follows:

Authority: 5 U.S.C. 552a, OMB Circular No. A–130.

■ 2. Section 310.2 is revised to read as follows:

§ 310.2 Purpose.

This part:

(a) Updates the established policies, guidance, and assigned responsibilities of the DoD Privacy Program pursuant to 5 U.S.C. 552a (also known and referred to in this part as "The Privacy Act") and Office of Management and Budget (OMB) Circular No. A–130.

(b) Authorizes the Defense Privacy Board and the Defense Data Integrity Board.

(c) Prescribes uniform procedures for implementation of and compliance with the DoD Privacy Program.

(d) Delegates authorities and responsibilities for the effective administration of the DoD Privacy Program.

■ 3. Section 310.3 is revised to read as follows:

§ 310.3 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the combatant commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to

collectively in this part as the "DoD Components").

(b) For the purposes of subsection (i), Criminal penalties, of The Privacy Act, any DoD contractor and any employee of such a contractor will be considered to be an employee of DoD when DoD provides by a contract for the operation by or on behalf of DoD of a system of records to accomplish a DoD function. DoD will, consistent with its authority, cause the requirements of section (m) of The Privacy Act to be applied to such systems.

■ 4. Section 310.4 is revised to read as follows:

§ 310.4 Definitions.

(a) *Access.* The review of a record or a copy of a record or parts thereof in a system of records by any individual.

(b) *Agency.* For the purposes of disclosing records subject to the Privacy Act among the DoD Components, the Department of Defense is considered a single agency. For all other purposes to include requests for access and amendment, denial of access or amendment, appeals from denials, and record keeping as relating to release of records to non-DoD Agencies, each DoD Component is considered an agency within the meaning of the Privacy Act.

(c) *Breach.* A loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information (PII), whether physical or electronic.

(d) *Computer matching.* The computerized comparison of two or more automated systems of records or a system of records with non-federal records. Manual comparisons are not covered.

(e) *Confidential source.* A person or organization who has furnished information to the Federal Government under an express promise, if made on or after September 27, 1975, that the person's or the organization's identity shall be held in confidence or under an implied promise of such confidentiality if this implied promise was made on or before September 26, 1975.

(f) *Disclosure.* The information sharing or transfer of any PII from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, government agency, or private entity other than the subject of the record, the subject's designated agent, or the subject's legal guardian.

(g) *DoD contractor.* Any individual or other legal entity that:

(1) Directly or indirectly (e.g., through an affiliate) submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a government contract, including a contract for carriage under government or commercial bills of lading, or a subcontract under a government contract; or

(2) Conducts business, or reasonably may be expected to conduct business, with the federal government as an agent or representative of another contractor.

(h) *DoD personnel.* Service members and federal civilian employees.

(i) *Federal benefit program.* A program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals.

(j) *Federal personnel.* Officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the United States (including survivor benefits).

(k) *Individual.* A living person who is a U.S. citizen or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual, except as otherwise provided in this part. Members of the Military Services are "individuals." Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not "individuals" when acting in an entrepreneurial capacity with the DoD, but persons employed by such organizations or entities are "individuals" when acting in a personal capacity (e.g., security clearances, entitlement to DoD privileges or benefits).

(l) *Individual access.* Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

(m) *Information sharing environment.* Defined in Public Law 108–458, "The Intelligence Reform and Terrorism Prevention Act of 2004".

(n) *Lost, stolen, or compromised information.* Actual or possible loss of control, unauthorized disclosure, or unauthorized access of personal information where persons other than authorized users gain access or potential access to such information for an other than authorized purpose where one or more individuals will be adversely affected. Such incidents also are known as breaches.

(o) *Maintain.* The collection, maintenance, use, or dissemination of records contained in a system of records.

(p) *Member of the public.* Any individual or party acting in a private capacity to include Federal employees or military personnel.

(q) *Mixed system of records.* Any system of records that contains information about individuals as defined by the Privacy Act and non-U.S. citizens and/or aliens not lawfully admitted for permanent residence.

(r) *Non-Federal agency.* Any state or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a computer matching program.

(s) *Official use.* Within the context of this part, this term is used when officials and employees of a DoD Component have a demonstrated a need for the record or the information contained therein in the performance of their official duties, subject to DoD 5200.1–R.[5]

(t) *Personally identifiable information (PII).* Information used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, biometric records, home phone numbers, other demographic, personnel, medical, and financial information. PII includes any information that is linked or linkable to a specified individual, alone, or when combined with other personal or identifying information. For purposes of this part, the term PII also includes personal information and information in identifiable form.

(u) *Privacy Act request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

(v) *Protected health information (PHI).* Defined in DoD 6025.18–R, "DoD Health Information Privacy Regulation" (available at *http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf*).

(w) *Recipient agency.* Any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a computer matching program.

(x) *Record.* Any item, collection, or grouping of information in any media (e.g., paper, electronic), about an individual that is maintained by a DoD

[5] See footnote 1 to § 310.1.

Component, including, but not limited to, education, financial transactions, medical history, criminal or employment history, and that contains the name, or identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, a voice print, or a photograph.

(y) *Risk assessment.* An analysis considering information sensitivity, vulnerabilities, and cost in safeguarding personal information processed or stored in the facility or activity.

(z) *Routine use.* The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

(aa) *Source agency.* Any agency which discloses records contained in a system of records to be used in a computer matching program, or any state or local government, or agency thereof, which discloses records to be used in a computer matching program.

(bb) *Statistical record.* A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

(cc) *System of records.* A group of records under the control of a DoD Component from which PII is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular uniquely assigned to an individual.

(dd) *System of records notice (SORN).* A notice published in the **Federal Register** that constitutes official notification to the public of the existence of a system of records.

■ 5. Section 310.5 is revised to read as follows:

§ 310.5 Policy.

It is DoD policy that:

(a) An individual's privacy is a fundamental legal right that must be respected and protected.

(1) The DoD's need to collect, use, maintain, or disseminate (also known and referred to in this part as "maintain") PII about individuals for purposes of discharging its statutory responsibilities will be balanced against their right to be protected against unwarranted privacy invasions.

(2) The DoD protects individual's rights, consistent with federal laws, regulations, and policies, when maintaining their PII.

(3) DoD personnel and DoD contractors have an affirmative responsibility to protect an individual's privacy when maintaining his or her PII.

(4) Consistent with section 1016(d) of Public Law 108–458 and section 1 of Executive Order 13388, "Further Strengthening the Sharing of Terrorism Information to Protect Americans," the DoD will protect information privacy and provide other protections relating to civil liberties and legal rights in the development and use of the information sharing environment.

(b) The DoD establishes rules of conduct for DoD personnel and DoD contractors involved in the design, development, operation, or maintenance of any system of records. DoD personnel and DoD contractors will be trained with respect to such rules and the requirements of this section and any other rules and procedures adopted pursuant to this section and the penalties for noncompliance. The DoD Rules of Conduct are established in § 310.8.

(c) DoD personnel and DoD contractors conduct themselves consistent with the established rules of conduct in § 310.8, so that records maintained in a system of records will only be maintained as authorized by 5 U.S.C. 552a and this part.

(d) DoD legislative, regulatory, or other policy proposals will be evaluated to ensure consistency with the information privacy requirements of this part.

(e) Pursuant to The Privacy Act, no record will be maintained on how an individual exercises rights guaranteed by the First Amendment to the Constitution of the United States (referred to in this part as "the First Amendment"), except:

(1) When specifically authorized by statute.

(2) When expressly authorized by the individual that the record is about.

(3) When the record is pertinent to and within the scope of an authorized law enforcement activity, including an authorized intelligence or administrative investigation.

(f) Disclosure of records pertaining to an individual from a system of records is prohibited except with his or her consent or as otherwise authorized by 5 U.S.C. 552a and this part or 32 CFR part 286. When DoD Components make such disclosures, the individual may, to the extent authorized by 5 U.S.C. 552a and this part, obtain a description of such disclosures from the Component concerned.

(g) Disclosure of records pertaining to personnel of the National Security Agency, the Defense Intelligence Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency is prohibited to the extent authorized by Public Law 86–36, "National Security Agency-Officers and Employees" and 10 U.S.C. 424. Disclosure of records pertaining to personnel of overseas, sensitive, or routinely deployable units is prohibited to the extent authorized by 10 U.S.C. 130b.

(h) The DoD establishes appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual about whom information is maintained.

(i) Disclosure of PHI will be consistent with DoD 6025.18–R.

(j) All DoD personnel and DoD contractors will be provided training pursuant to 5 U.S.C. 552a and OMB Circular No. A–130.

(k) PII collected, used, maintained, or disseminated will be:

(1) Relevant and necessary to accomplish a lawful DoD purpose required by statute or Executive Order.

(2) Collected to the greatest extent practicable directly from the individual. He or she will be informed as to why the information is being collected, the authority for collection, how it will be used, whether disclosure is mandatory or voluntary, and the consequences of not providing that information.

(3) Relevant, timely, complete, and accurate for its intended use.

(4) Protected using appropriate administrative, technical, and physical safeguards based on the media (e.g., paper, electronic) involved. Protection will ensure the security of the records and prevent compromise or misuse during maintenance, including working at authorized alternative worksites.

(l) Individuals are permitted, to the extent authorized by 5 U.S.C. 552a and this part, to:

(1) Upon request by an individual, gain access to records or to any information pertaining to the individual which is contained in a system of records.

(2) Obtain a copy of such records, in whole or in part.

(3) Correct or amend such records once it has been determined that the records are not accurate, relevant, timely, or complete.

(4) Appeal a denial for a request to access or a request to amend a record.

(m) Non-U.S. citizens and aliens not lawfully admitted for permanent residence may request access to and

amendment of records pertaining to them; however, this part does not create or extend any right pursuant to The Privacy Act to them.

(n) SORNs and notices of proposed or final rulemaking are published in the **Federal Register** (FR), and reports are submitted to Congress and OMB, in accordance with 5 U.S.C. 552a, OMB Circular No. A–130, and this part, DoD 8910.1–M, "Department of Defense Procedures for Management of Information Requirements" (available at *http://www.dtic.mil/whs/directives/corres/pdf/891001m.pdf*), and DoD Instruction 5545.02, "DoD Policy for Congressional Authorization and Appropriations Reporting Requirements" (available at *http://www.dtic.mil/whs/directives/corres/pdf/554502p.pdf*). Information about an individual maintained in a new system of records will not be collected until the required SORN publication and review requirements are satisfied.

(o) All DoD personnel must make reasonable efforts to inform an individual, at their last known address, when any record about him or her is disclosed:

(1) Due to a compulsory legal process.

(2) In a manner that will become a matter of public record.

(p) Individuals must be notified in a timely manner, consistent with the requirements of this part, if there is a breach of their PII.

(q) At least 30 days prior to disclosure of information pursuant to subparagraph (e)(4)(D) (routine uses) of The Privacy Act, the DoD will publish an FR notice of any new use or intended use of the information in the system, and provide an opportunity for interested people to submit written data, views, or arguments to the agency.

(r) Computer matching programs between the DoD Components and federal, state, or local governmental agencies are conducted in accordance with the requirements of 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(s) The DoD will publish in the FR notice any establishment or revision of a matching program at least 30 days prior to conducting such program of such establishment or revision if any DoD Component is a recipient agency or a source agency in a matching program with a non-federal agency.

■ 6. Revise § 310.6 to read as follows:

§ 310.6 Responsibilities.

(a) The Director of Administration and Management (DA&M):

(1) Serves as the Senior Agency Official for Privacy (SAOP) for the DoD. These duties, in accordance with OMB Memorandum M–05–08, "Designation of Senior Agency Officials for Privacy" (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-08.pdf*), include:

(i) Ensuring DoD implementation of information privacy protections, including full compliance with federal laws, regulations, and policies relating to information privacy.

(ii) Overseeing, coordinating, and facilitating DoD privacy compliance efforts.

(iii) Ensuring that DoD personnel and DoD contractors receive appropriate training and education programs regarding the information privacy laws, regulations, policies, and procedures governing DoD-specific procedures for handling of PII.

(2) Provides rules of conduct and policy for, and coordinates and oversees administration of, the DoD Privacy Program to ensure compliance with policies and procedures in 5 U.S.C. 552a and OMB Circular No. A–130.

(3) Publishes this part and other guidance to ensure timely and uniform implementation of the DoD Privacy Program.

(4) Serves as the chair of the Defense Privacy Board and the Defense Data Integrity Board.

(5) As requested, ensures that guidance, assistance, and subject matter expert support are provided to the combatant command privacy officers in the implementation and execution of and compliance with the DoD Privacy Program.

(6) Acts as The Privacy Act Access and Amendment appellate authority for OSD and the Office of the Chairman of the Joint Chiefs of Staff when an individual is denied access to or amendment of records pursuant to The Privacy Act and DoD Directive 5105.53, "Director of Administration and Management (DA&M)" (available at *http://www.dtic.mil/whs/directives/corres/pdf/510553p.pdf*).

(b) The Director, Defense Privacy and Civil Liberties Office (DPCLO), under the authority, direction, and control of the DA&M:

(1) Ensures that laws, policies, procedures, and systems for protecting individual privacy rights are implemented throughout DoD.

(2) Oversees and provides strategic direction for the DoD Privacy Program.

(3) Assists the DA&M in performing the responsibilities in paragraphs (a)(1) through (a)(6) of this section.

(4) Reviews DoD legislative, regulatory, and other policy proposals that contain information privacy issues relating to how the DoD keeps its PII. These reviews must include any proposed legislation, testimony, and comments having privacy implications in accordance with DoD Directive 5500.01, "Preparing, Processing, and Coordinating Legislation, Executive Orders, Proclamations, Views Letters, and Testimony" (available at *http://www.dtic.mil/whs/directives/corres/pdf/550001p.pdf*).

(5) Reviews proposed new, altered, and amended systems of records. Submits required SORNs for publication in the **Federal Register** (FR) and, when required, provides advance notification to OMB and Congress consistent with 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(6) Reviews proposed DoD Component privacy exemption rules. Submits the exemption rules for publication in the FR, and submits reports to OMB and Congress consistent with 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(7) Develops, coordinates, and maintains all DoD computer matching agreements. Submits required match notices for publication in the FR and provides advance notification to OMB and Congress consistent with 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(8) Provides guidance, assistance, and support to the DoD Components in their implementation of the DoD Privacy Program to ensure that:

(i) All requirements developed to maintain PII conform to the DoD Privacy Program standards.

(ii) Appropriate procedures and safeguards are developed and implemented to protect PII when it is collected, used, maintained, or disseminated in any media.

(iii) Specific procedures and safeguards are developed and implemented when PII is collected and maintained for research purposes.

(9) Compiles data in support of the DoD Chief Information Officer (DoD CIO) submission of the Federal Information Security Management Act (FISMA) Privacy Reports, pursuant to OMB Memorandum M–06–15, "Safeguarding Personally Identifiable Information" (available at *http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/m-06-15.pdf*); the Biennial Matching Activity Report to OMB, in accordance with OMB Circular No. A–130 and this part; the quarterly Section 803 report in accordance with 42 U.S.C. 2000ee and 2000ee–1; and other reports as required.

(10) Reviews and coordinates on DoD Component privacy program implementation rules to ensure they are in compliance with the DoD-level guidance.

(11) Provides operational and administrative support to the Defense Privacy Board and the Defense Data Integrity Board.

(c) The General Counsel of the Department of Defense (GC DoD):

(1) Provides advice and assistance on all legal matters related to the administration of the DoD Privacy Program.

(2) Appoints a designee to serve as a member of the Defense Privacy Board and the Defense Data Integrity Board.

(3) When a DoD Privacy Program group is created, appoints a designee to serve as a member.

(d) The DoD Component heads:

(1) Provide adequate funding and personnel to establish and support an effective DoD Privacy Program.

(2) Establish DoD Component-specific procedures in compliance with this part and publish these procedures as well as rules of conduct in the FR.

(3) Establish and implement appropriate administrative, physical, and technical safeguards and procedures prescribed in this part and other DoD Privacy Program guidance.

(4) Ensure Component compliance with supplemental guidance and procedures in accordance with all applicable federal laws, regulations, policies, and procedures.

(5) Appoint a Component senior official for privacy (CSOP) to support the SAOP in carrying out the SAOP's duties identified in OMB Memorandum M–05–08.

(6) Appoint a Component privacy officer to administer the DoD Privacy Program, on behalf of the CSOP.

(7) Ensure DoD personnel and DoD contractors having primary responsibility for implementing the DoD Privacy Program receive appropriate privacy training. This training must be consistent with the requirements of this part and will address the provisions of 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(8) Ensure that all DoD Component legislative, regulatory, or other policy proposals are evaluated to ensure consistency with the information privacy requirements of this part.

(9) Assess the impact of technology on the privacy of PII and, when feasible, adopt privacy-enhancing technology to:

(i) Preserve and protect PII contained in a DoD Component system of records.

(ii) Audit compliance with the requirements of this part.

(10) Ensure that officials who have specialized knowledge of the DoD Privacy Program periodically review Component implementation of and compliance with the DoD Privacy Program.

(11) Submit reports, consistent with the requirements of this part, in accordance with 5 U.S.C. 552a and OMB Circular No. A–130, and as otherwise directed by the Director, DPCLO.

(e) *Secretaries of the Military Departments.* In addition to the responsibilities in paragraph (d) of this section, the Secretaries of the Military Departments provide program and financial support to the combatant commands as identified in DoD Directive 5100.03, "Support to the Headquarters of Combatant and Subordinate Unified Commands" (available at *http://www.dtic.mil/whs/directives/corres/pdf/510003p.pdf*) to fund, without reimbursement, the administrative and logistic support required by combatant and subordinate unified command headquarters to perform their assigned missions effectively.

§ 310.7 [Removed and Reserved]

■ 7. Section 310.7 is removed and reserved.

■ 8. Section 310.8 is revised to read as follows:

§ 310.8 Rules of conduct.

In accordance with section (e)(9) of The Privacy Act, this section provides DoD rules of conduct for the development, operation, and maintenance of systems of records. DoD personnel and DoD contractor personnel will:

(a) Take action to ensure that any PII contained in a system of records that they access and use to conduct official business will be protected so that the security and confidentiality of the information is preserved.

(b) Not disclose any PII contained in any system of records, except as authorized by The Privacy Act, or other applicable statute, Executive order, regulation, or policy. Those willfully making any unlawful or unauthorized disclosure, knowing that disclosure is prohibited, may be subject to criminal penalties or administrative sanctions.

(c) Report any unauthorized disclosures of PII from a system of records to the applicable Privacy point of contact (POC) for the respective DoD Component.

(d) Report the maintenance of any system of records not authorized by this part to the applicable Privacy POC for the respective DoD Component.

(e) Minimize the collection of PII to that which is relevant and necessary to accomplish a purpose of the DoD.

(f) Not maintain records describing how any individual exercises rights guaranteed by the First Amendment, except:

(1) When specifically authorized by statute.

(2) When expressly authorized by the individual that the record is about.

(3) When the record is pertinent to and within the scope of an authorized law enforcement activity, including authorized intelligence or administrative activities.

(g) Safeguard the privacy of all individuals and the confidentiality of all PII.

(h) Limit the availability of records containing PII to DoD personnel and DoD contractors who have a need to know in order to perform their duties.

(i) Prohibit unlawful possession, collection, or disclosure of PII, whether or not it is within a system of records.

(j) Ensure that all DoD personnel and DoD contractors who either have access to a system of records or develop or supervise procedures for handling records in a system of records are aware of their responsibilities and are properly trained to safeguard PII being maintained under the DoD Privacy Program.

(k) Prepare any required new, amended, or altered SORN for a given system of records and submit the SORN through their DoD Component Privacy POC to the Director, DPCLO, for coordination and submission for publication in the **Federal Register** (FR).

(l) Not maintain any official files on individuals, which are retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual, also known as a system of records, without first ensuring that a notice has been published in the FR. Any official who willfully maintains a system of records without meeting the publication requirements as prescribed by this part and The Privacy Act may be subject to criminal penalties or administrative sanctions.

(m) Maintain all records in a mixed system of records as if all the records in such a system are subject to The Privacy Act.

■ 9. Amend § 310.9 by revising paragraphs (a) and (b) to read as follows:

§ 310.9 Privacy boards and office, composition and responsibilities.

(a) *The Defense Privacy Board*—(1) *Membership.* The Board consists of:

(i) *Voting Members.* Representatives designated by the Secretaries of the Military Departments and the following officials or their designees:

(A) The DA&M, who serves as the chair.

(B) The Director, DPCLO.

(C) The Director for Privacy, DPCLO, who serves as the Executive Secretary and as a member.

(D) The Under Secretary of Defense for Personnel and Readiness.

(E) The Assistant Secretary of Defense for Health Affairs.

(F) The DoD CIO.

(G) The Director, Defense Manpower Data Center.

(H) The Director, Executive Services Directorate, Washington Headquarters Services (WHS).

(I) The GC DoD.

(J) The Chief of the National Guard Bureau.

(ii) *Non-Voting Members.* Non-voting members are the Director, Enterprise Information Technology Services Directorate (EITSD), WHS; and the representatives designated by Defense Agency and DoD Field Activity directors.

(2) *Responsibilities.* The Board:

(i) Serves as the primary DoD policy forum for matters involving the DoD Privacy Program, meeting as necessary to address issues of common concern to ensure that consistent policy is adopted and followed by the DoD Components. The Board issues advisory opinions, as necessary, on the DoD Privacy Program to promote uniform and consistent application of 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(ii) Establishes and convenes committees as necessary.

(iii) Establishes working groups whose membership is composed of DoD Component privacy officers and others as necessary.

(b) *The Defense Data Integrity Board*—(1) *Membership.* The Board consists of:

(i) The DA&M, who serves as the chair.

(ii) The Director, DPCLO.

(iii) The Director for Privacy, DPCLO, who serves as the Executive Secretary.

(iv) The representatives designated by the Secretaries of the Military Departments; the DoD CIO; the GC DoD; the Inspector General of the Department of Defense, who is a non-voting advisory member; the Director, EITSD; and the Director, Defense Manpower Data Center.

(2) *Responsibilities.* The Board:

(i) Oversees and coordinates, consistent with the requirements of 5 U.S.C. 552a, OMB Circular No. A–130, and this part, all computer matching agreements involving personal records contained in systems of records maintained by the DoD Components.

(ii) Reviews and approves all computer matching agreements between the DoD and other federal, state, or local governmental agencies, as well as any memorandums of understanding, when the match is internal to the DoD. This review ensures that, in accordance with 5 U.S.C. 552a, OMB Circular No. A–130, and this part, appropriate procedural and due process requirements are established before engaging in computer matching activities.

* * * * *

■ 10. Amend § 310.10 by revising paragraph (a)(1) to read as follows:

§ 310.10 General.

(a) * * *

(1) Consist of "records" (as defined in § 310.4) that are retrieved by the name of an individual or some other personal identifier; and

* * * * *

Dated: August 19, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20515 Filed 8–21–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XC812

Atlantic Highly Migratory Species; 2006 Consolidated Highly Migratory Species Fishery Management Plan; Amendment 7

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

ACTION: Notice of public hearings.

SUMMARY: NMFS will publish a proposed rule for Draft Amendment 7 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) to control bluefin incidental catch (landings and dead discards) in the pelagic longline fishery, enhance reporting in all categories, and ensure U.S. compliance with the ICCAT-recommend quota. As described in the proposed rule, the proposed measures include Allocation measures, Area-Based measures, Bluefin Quota Controls, Enhanced Reporting measures, and other measures that modify rules with respect to how the various quota categories utilize quota. In this notice, NMFS announces the dates and logistics for 10 public hearings to provide additional opportunities for members of the public to comment on the bluefin management measures proposed in Draft Amendment 7. NMFS will also consult with the HMS Advisory Panel during its meeting scheduled September 9–12, 2013. There will be opportunities for public comment during open sessions held each day of the Advisory Panel meeting.

DATES: Written comments will be accepted until October 23, 2013. Public hearings, an advisory panel meeting, and council consultations will be held between August 1, 2013 to October 31, 2013, to present information about Amendment 7 and to provide opportunities for the submission of public comment regarding the proposed rule. See **SUPPLEMENTARY INFORMATION** for meeting dates, times, and locations.

ADDRESSES: A total of ten public hearings will be held along the Atlantic and Gulf coasts to provide the opportunity for public comment. NMFS will also hold an HMS Advisory Panel meeting in Silver Spring, MD, during which there will be opportunities for public comment (78 FR 44095). See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

You may submit comments on the proposed rule identified by "NOAA–NMFS–2013–0101," by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0101*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments. Do not submit electronic comments to individual NMFS staff
- *Mail:* Submit written comments to: Thomas Warren, Highly Migratory Species Management Division, NMFS, 55 Great Republic Drive, Gloucester, MA 01930. Please mark the outside of the envelope "Comments on Amendment 7 to the HMS FMP."
- *Fax:* 978–281–9347, Attn: Thomas Warren.
- *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 generally will be posted for public viewing on *www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.), confidential business information, or otherwise sensitive information 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). You may submit attachments to electronic comments in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Thomas Warren or Brad McHale at 978–281–9260; Craig Cockrell or Jennifer Cudney at 301–427–8503.

SUPPLEMENTARY INFORMATION: The North Atlantic tuna fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Under the Magnuson-Stevens Act, NMFS must manage fisheries to maintain optimum yield on a continuing basis while preventing overfishing. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS. Management of these species is described in the 2006 Consolidated HMS FMP, which is implemented by regulations at 50 CFR part 635. Copies of the 2006 Consolidated HMS FMP and previous amendments are available from the Highly Migratory Species Management Division Web page at *http://www.nmfs.noaa.gov/sfa/hms/hmsdocument_files/FMPs.htmhttp://www.nmfs.noaa.gov/sfa/hms/hmsdocument_files/FMPs.htm* or from NMFS on request (see **FOR FURTHER INFORMATION CONTACT**).

NMFS will publish Draft Amendment 7 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) to control bluefin landings and dead discards in the pelagic longline fishery, enhance reporting in all categories, and ensure U.S. compliance with the ICCAT-recommend quota. As described in the proposed rule, the proposed management measures include: (1) Allocation measures that would make modifications to how the U.S. bluefin quota is allocated among the quota categories; (2) area-based measures that would implement restrictions on the use of pelagic longline gear in various time and area combinations, modify gear restrictions, or provide conditional access to current pelagic longline closed areas; (3) bluefin Quota Controls that would strictly limit the total catch (landings and dead discards) of bluefin in the Longline category using different strategies; (4) enhanced reporting measures that would implement a variety of new bluefin reporting requirements; and (5) other Measures that would make modifications to the rules that control how the various quota categories utilize quota, and implement a northern albacore tuna quota.

Request for Comments: A total of ten public hearings will be held along the Atlantic and Gulf of Mexico coasts to provide the opportunity for public comment on potential management measures. See Table 1 for dates, times and locations of public hearings. NMFS will also consult with the HMS Advisory Panel on September 9–12, 2013 (78 FR 44095). There will be opportunities for public comment during open sessions held each day of the Advisory Panel meeting. See the following Web site for additional details on the Advisory Panel meeting, including the agenda, presentations and outreach materials (typically available the week before the meeting): *http://www.nmfs.noaa.gov/sfa/hms/Advisory%20Panels/Advisory_Panel.htm*

NMFS has also requested time on the meeting agendas of the relevant Regional Fishery Management Councils (i.e., the Caribbean, Gulf of Mexico, South Atlantic, Mid-Atlantic, and New England Fishery Management Councils) to present information on the proposed rule and draft Amendment 7. Information on the date and time of those presentations will be provided on the appropriate council agendas.

TABLE 1—DATES, TIMES AND LOCATIONS OF UPCOMING PUBLIC HEARINGS

Venue	Date/Time	Meeting locations	Location contact information
Public Hearing in association with the Gulf of Mexico Fishery Management Council meeting).	August 28, 2013, 6 p.m.–10 p.m.	San Antonio, TX	Hilton Palacio Del Rio, 200 S. Alamo, San Antonio, TX 78205, (210) 222–1400.
Public Hearing	September 4, 2013, 6 p.m.–10 p.m.	Gloucester, MA	National Marine Fisheries Service, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.
Public Hearing	September 18, 2013, 6 p.m.–10 p.m.	Manteo, NC	Community Auditorium, College of the Albemarle, 132 Russell Twiford Road, Manteo, NC 27954, (252) 473–2264.
Public Hearing	September 19, 2013, 6 p.m.–10 p.m.	Charleston, SC	Center for Coastal and Environmental Health and Biomolecular Research—National Ocean Service, 219 Fort Johnson Road, Charleston, SC 29412.
Public Hearing	September 24, 2013, 6 p.m.–10 p.m.	Belle Chasse, LA	Plaquemines Parish Government Community Center (Belle Chasse Auditorium), 8398 Hwy. 23, Belle Chasse, LA 70037, (504) 208–1320.
Public Hearing	September 26, 2013, 6 p.m.–10 p.m.	Portland, ME	Gulf of Maine Research Institute, 350 Commercial Street, Portland, ME 04901, (207) 772–2321.
Public Hearing	September 30, 2013, 6 p.m.–10 p.m.	Panama City, FL	Bay County Public Library, 898 W. 11th St., Panama City, FL 32401, (850) 552–2100.
Public Hearing	October 1, 2013, 6 p.m.–10 p.m.	Fort Pierce, FL	Days Inn Fort Pierce, 3224 U.S. 1, Fort Pierce, FL 34982, (772) 465–7000.
Public Hearing	October 2, 2013, 6 p.m.–10 p.m.	St. Petersburg, FL	National Marine Fisheries Service, Southeast Regional Office, 263 13th Avenue South, Saint Petersburg, FL 33701, (727) 824–5301.
Public Hearing	October 8, 2013, 6 p.m.–10 p.m.	Toms River, NJ	Ocean County, Public Administration Building, Freeholders Meeting Room (119), 101 Hooper Ave., Toms River, NJ 08754, (732) 929–2147.

Public Hearing Code of Conduct

The public is reminded that NMFS expects participants at public hearings and the HMS Advisory Panel meeting to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the meeting room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal opportunity to speak; attendees may not interrupt one another; etc.). NMFS representative(s) will structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not will be asked to leave the meeting.

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

Dated: August 19, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–20513 Filed 8–20–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 130625564–3711–01]

RIN 0648–XC736

Main Hawaiian Islands Deep 7 Bottomfish Annual Catch Limits and Accountability Measures for 2013–14

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes to specify an annual catch limit of 346,000 lb for Deep 7 bottomfish in the main Hawaiian Islands for the 2013–14 fishing year. If and when the annual catch limit is projected to be reached, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed specifications and fishery closure support the long-term sustainability of Hawaii bottomfish.

DATES: Comments must be received by September 6, 2013.

ADDRESSES: You may submit comments on this proposed specification, identified by NOAA–NMFS–2013–0103, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0103*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous), and will accept attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808–944–2108.

SUPPLEMENTARY INFORMATION: The bottomfish fishery in Federal waters around Hawaii is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago (Hawaii FEP), developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations at 50 CFR 665.4 require NMFS to specify an annual catch limit for MHI Deep 7 bottomfish each fishing year, based on a recommendation from the Council. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Epinephelus quernus*).

The Council's recommendation of an annual catch limit of 346,000 lb considers the most recent bottomfish stock assessment, risk of overfishing, past fishery performance, recommendations from its Scientific and Statistical Committee (SSC), and input from the public. The proposed annual catch limit is based on a 2011 stock assessment that indicated that the MHI Deep 7 bottomfish were not overfished and not subject to overfishing. No new information suggests that this situation has changed. The proposed annual catch limit is associated with less than a 41 percent probability of overfishing the Deep 7 bottomfish in the MHI. This risk level is more conservative than the 50 percent risk threshold allowed under NMFS guidelines for National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS monitors Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. If and when the annual catch limit is projected to be reached, NMFS, as an accountability measure, would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish in Federal waters for the remainder of the fishing year. If and when NMFS closes Federal waters to fishing for Deep 7 bottomfish, State of Hawaii law allows the State to adopt a complementary closure of the Deep 7 fishery in State waters. During a closure for Deep 7 bottomfish, no person may fish for, possess, or sell any of these fish in the MHI, except as otherwise authorized by law. However, vessels legally registered to Pacific Remote Island Area bottomfish fishing permits may still fish for and possess or sell Deep 7 bottomfish, provided they otherwise comply with all other laws and regulations. There is no prohibition on fishing for or selling other non-Deep 7 bottomfish species throughout the year.

NMFS will consider public comments on the proposed annual catch limit and accountability measure, and anticipates announcing the final specifications prior to the scheduled reopening of the fishery on September 1, 2013. The fishery will continue until August 31, 2014, unless the fishery is closed earlier because the annual catch limit is reached. Regardless of the final annual catch limit, all other management measures will continue to apply in the MHI bottomfish fishery.

To be considered, comments on these proposed specifications must be received by September 6, 2013, not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed

specification is consistent with the Hawaii FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for it are contained in the preamble to these proposed specifications.

NMFS proposes to specify an annual catch limit (ACL) of 346,000 lb for Deep 7 bottomfish in the main Hawaiian Islands (MHI) for the 2013–14 fishing year, as recommended by the Western Pacific Fishery Management Council. NMFS monitors Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. If and when the fishery is projected to reach this limit, NMFS, as an accountability measure (AM), would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed ACL and AM specifications are identical to those NMFS implemented for the 2011–12 and 2012–13 fishing years, and support the long-term sustainability of Hawaii bottomfish.

However, NMFS does not expect the ACL will be reached, and that this rule will not have an adverse economic impact on the affected entities. In the 2011–12 fishing year, NMFS set an identical ACL for Deep 7 bottomfish, and 468 commercial vessels reported landing 228,388 lb of Deep 7 bottomfish. Based on the most recent landings information, the fishery is unlikely to reach the ACL set for the 2012–13 fishing year. The 2012–13 fishing year started on September 1, 2012. As of July 12, 2013, 442 commercial vessels reported landing 222,489 lb of Deep 7 bottomfish, at an average landed price of $5.66/lb, for an estimated average gross revenue from Deep 7 bottomfish landings of $2,849 per vessel. The fishery is not likely to reach the ACL before the current fishing year ends on August 31, 2013. NMFS proposes to specify the same ACL for 2013–14 as in 2012–13. Assuming an average price of $5.66/lb and 442 participating vessels, NMFS expects the proposed 2013–14 ACL of 346,000 lb to yield up to $1,958,360 in total revenue, or an average of $4,431 per vessel. Accordingly, if implemented, the ACL set here will not adversely impact affected entities; indeed, it may benefit them if the whole ACL is harvested.

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries, effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from $4.0 to 19.0 million, Shellfish Fishing from $4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million. Id at 37400 (Table 1). Based on available information, NMFS has determined that all vessels in the current fishery are small entities under the SBA definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of $19 million, the small business size standard for finfish fishing. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there are would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

Pursuant to the RFA, NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, and they all would continue to be considered small under the new standards. NMFS does not think that the new size standards affect analyses prepared for this action, and solicits public comment on the analyses in light of the new size standards.

Even though this proposed specification would affect a substantial number of vessels, i.e., 100 percent of the bottomfish fleet, NMFS does not expect the rule will have a significantly adverse economic impact to individual vessels. Landings information from the 2011–12 fishing year (completed) and the 2012–13 fishing year (ongoing) suggest that Deep 7 bottomfish landings are not likely to exceed the ACL proposed for 2013–14.

Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), NMFS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under the procedures of E.O. 12866.

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

Dated: August 16, 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. 2013–20407 Filed 8–21–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 163
Thursday, August 22, 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

August 16, 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 September 23, 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 20502. 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) 720–8958.

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.

Farm Service Agency

Title: Commodity Offer Forms (Previously noted in the 60-day Federal Register as Web-based Supply and Chain Management System Offer Forms).

OMB Control Number: 0560–0177.

Summary of Collection: The Food for Peach Act specifically (Pub. L. 480 Title II), Section 416(b) of the Agricultural Act of 1949; Food for Progress Act of 1985; 2002 and 2008 Farm Bills authorizing the McGovern-Dole International Food for Education Program; and Commodity Credit Corporation (CCC) Charter Act, all as amended, authorize the International Procurement Division to procure, sell, and transport, as well as sample, inspect and survey, agricultural commodities at both domestic and foreign locations for use in international food aid program. Commodity vendors under contract are required to submit Advance Shipping Notifications so that receivers of these commodities within the U.S. can arrange for their timely lifting for transport overseas via ocean-going vessels. The Farm Service Agency (FSA) will collect information using some forms.

Need and Use of the Information: The information collected will enable Kansas City Commodity Office (KCCO) to evaluate offers impartially, purchase or sell commodities, and obtain services to meet domestic and export program needs. Without the information CCC could not perform the tasks required to meet the international and domestic food aid program requirements.

Description of Respondents: Business or other for-profit; not for-profit institutions.

Number of Respondents: 76.

Frequency of Responses: Recordkeeping; reporting: On occasion; quarterly; weekly; semi-annually; monthly; annually.

Total Burden Hours: 237.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–20432 Filed 8–21–13; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–CN–13–0046]

Tobacco Inspection and Grading Services: Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension to the currently approved information collection in support of the Fair and Equitable Tobacco Reform Act of 2004 (U.S.C. Chapter 518), the Rural Development, Food and Drug Administrative, and Related Agencies Appropriations Act for 2002 (Appropriations Act), and the Tobacco Inspection Act and Regulations Governing the Tobacco Standards.

DATES: Comments received by October 21, 2013 will be considered.

Additional Information or Comments: Interested persons are invited to submit written comments concerning this proposal to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406. Comments should be submitted in triplicate. Comments may also be submitted electronically through *www.regulations.gov*. All comments should reference AMS–CN–13–0046. All comments received will be made available for public inspection at *www.regulations.gov* or at the Cotton and Tobacco Programs, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recording Requirements for 7 CFR Part 29.

OMB Number: 0581–0056.

Expiration Date of Approval: January 31, 2014.

Type of Request: Extension of a currently approved information collection.

Abstract: The Tobacco Inspection Act (7 U.S.C. 511–511s) requires that all tobacco sold at designated auction markets in the U.S. be inspected and graded. The Appropriations Act (7 U.S.C. 511s note) requires that all tobacco eligible for price support in the U.S. be inspected and graded. The Fair and Equitable Tobacco Reform Act of 2004 (7 U.S.C. 518–519a) eliminated price supports and marketing quotas for all tobacco beginning with the 2005 crop year. Mandatory inspection and grading of domestic and imported tobacco was eliminated as well as the mandatory pesticide testing of imported tobacco and the tobacco market news program. The Tobacco Inspection Act also provides for interested parties to request inspection, pesticide testing, and grading services on a permissive basis. The information collection requirements authorized for the programs under the Tobacco Inspection Act and the Appropriations Act include: application for inspection of tobacco, application and other information used in the approval of new auction markets or the extension of services to designated tobacco markets, and the information required to be provided in connection with auction and nonauction sales.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.60 hours per response.

Respondents: Primarily tobacco companies, tobacco manufacturers, import inspectors, and small businesses or organizations.

Estimated Number of Respondents: 50

Estimated Number of Responses per Respondent: 48

Estimated Number of Responses: 2,415

Estimated Total Annual Burden on Respondents: 3,851

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments also may be sent to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406. All comments received will be available for public inspection during regular business hours at the same address or through *www.regulations.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 16, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20439 Filed 8–21–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–CN–13–0044]

Cotton Classing, Testing and Standards: Notice of Request for an Extension and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension and revision to the currently approved information collection entitled Cotton Classing, Testing, and Standards.

DATES: Comments received by October 21, 2013 will be considered.

Additional Information or Comments: Interested persons are invited to submit written comments concerning this proposal to: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, or email at *Shethir.Riva@ams.usda.gov*. Comments should be submitted in triplicate. Comments may also be submitted electronically through *www.regulations.gov*. All comments should reference the AMS–CN–13–0044. All comments received will be made available for public inspection through *www.regulations.gov* or at Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406 during regular business hours.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Cotton Classing, Testing, and Standards.

OMB Number: 0581–0008.

Expiration Date of Approval: January 31, 2014.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: Information solicited is used by the USDA to administer and supervise activities associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA Standards. The information requires personal data, such as name, type of business, address, and description of classification services requested. These programs are conducted under the United States Cotton Standards Act (7 U.S.C. 51b), the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 473c), and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622h) and regulations appear at 7 CFR part 28.

The information collection requirements in this request are essential to carry out the intent of the Acts and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies.

The information collected is used only by authorized employees of the USDA, AMS. The cotton industry is the primary user of the compiled information and AMS and other

government agencies are secondary users.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.07 hours per response.

Respondents: Cotton merchants, warehouses, and gins

Estimated Number of Respondents: 993

Estimated Number of Responses per Respondent: 1.91

Estimated Number of Responses: 1,893

Estimated Total Annual Burden on Respondents: 141.30

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, or email at *Shethir.Riva@ams.usda.gov*. All comments received will be available for public inspection during regular business hours at the same address or at *www.regulations.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 16, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20436 Filed 8–21–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–CN–13–0045]

Cotton Classification and Market News Service: Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for an extension of and revision to the currently approved information collection Cotton Classification and Market News Service.

DATES: Comments received by October 21, 2013 will be considered.

Additional Information or Comments: Interested persons are invited to submit written comments concerning this proposal to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. Comments should be submitted in triplicate. Comments may also be submitted electronically through *www.regulations.gov*. All comments should reference AMS–CN–13–0045. All comments received will be made available for public inspection at *www.regulations.gov* or at the Cotton and Tobacco Programs, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Cotton Classification and Market News Service.

OMB Number: 0581–0009.

Expiration Date of Approval: January 31, 2014.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The Cotton Classification and Market News Service program provides market information on cotton prices, quality, stocks, demand and supply to growers, ginners, merchandisers, textile mills and the public for their use in making sound business decisions. The Cotton Statistics and Estimates Act (7 U.S.C. 471–476), authorizes and directs the Secretary of Agriculture to: (a) Collect and publish annually, statistics or estimates concerning the grades and staple lengths of stocks of cotton, known as the carryover, on hand on the 1st of August each year in warehouses and other establishments of every character in the continental U.S., and following such publication each year, to publish at intervals, in his/her discretion, his/her estimate of the grades and staple length of cotton of the current crop (7 U.S.C. 471) and (b) Collect, authenticate, publish and distribute by radio, mail, or otherwise, timely information of the market supply, demand, location, and market prices of cotton (7 U.S.C. 473b). The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) authorizes and directs the Secretary of Agriculture to collect and disseminate marketing information, including adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products.

The information collection requirements in this request are essential to carry out the intent of the Acts and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies. This includes information on cotton, cottonseed and cotton linters.

The information collected is used only by authorized employees of the USDA, AMS. The cotton industry is the primary user of the compiled information and AMS and other government agencies are secondary users.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.12 hours per response.

Respondents: Cotton Merchandisers, Textile Mills, Ginners.

Estimated Number of Respondents: 826

Estimated Number of Responses per Respondent: 6.37.

Estimated Number of Responses: 5,260

Estimated Total Annual Burden on Respondents: 652.72

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the

burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be submitted electronically through www.regulations.gov. Comments also may be sent to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. All comments received will be available for public inspection during regular business hours at the same address or through *www.regulations.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 16, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20434 Filed 8–21–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–CN–13–0062]

Tobacco Report: Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension of and revision to the currently approved information collection for Tobacco Report (OMB No. 0581–0004).

DATES: Comments received by October 21, 2013 will be considered.

Additional Information or Comments: Interested persons are invited to submit written comments concerning this proposal to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406. Comments should be submitted in triplicate. Comments may also be submitted electronically through *www.regulations.gov.* All comments should reference AMS–CN–13–0062. All comments received will be made available for public inspection at *www.regulations.gov* or at the Cotton and Tobacco Programs, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tobacco Report.

OMB Number: 0581–0004.

Expiration Date of Approval: May 31, 2014.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The Tobacco Statistics Act of 1929 (7 U.S.C. 501–508) provides for the collection and publication of statistics of tobacco by USDA with regard to quantity of leaf tobacco in all forms in the United States and Puerto Rico, owned by or in the possession of dealers, manufacturers, and others with the exception of the original growers of the tobacco.

The statistics shall show the quantity of the tobacco in such detail as to types, as USDA shall deem to be practical and necessary and shall be summarized as of January 1, April 1, July 1, and October 1 of each year and are due within 15 days of the summarized dates.

The information furnished under the provisions of this Act shall be used only for statistical purposes for which it is supplied. No publication shall be made by USDA whereby the data furnished by any particular establishment can be identified, nor shall anyone other than the sworn employees of USDA be allowed to examine the individual reports.

The regulations governing the Tobacco Stocks and Standards Act (7 CFR part 30) issued under the Tobacco Statistics Act (7 U.S.C. 501–508) specifically address the reporting requirements. Tobacco in leaf form or stems is reported by types of tobacco and whether stemmed or unstemmed. Tobacco in sheet form shall be segregated as to whether for cigar wrapper, cigar binder, for cigarettes, or for other products.

Tobacco stocks reporting is mandatory. The basic purpose of the information collection is to ascertain the total supply of unmanufactured tobacco available to domestic manufacturers and to calculate the amount consumed in manufactured tobacco products. This data was also used for the calculation of production quotas for individual types of tobacco and for price support calculations until repealed in 2005.

The Quarterly Report of Manufacture and Sales of Snuff, Smoking and Chewing Tobacco is voluntary. Prior to 1965, information on the manufacture and sale of snuff, smoking and chewing tobacco products was available from Treasury Department publications on the collection of taxes. With repeal of the Federal tax in 1965, the industry requested that the collection of basic data be continued to maintain the statistical series and all major manufacturers agreed to furnish information. Federal taxes were re-imposed in 1985 for snuff and chewing tobacco and the Treasury Department began reporting data on these products, but not in the detail desired by the industry. Data from this report was also used in calculations to determine the production quotas of types of tobacco used in these products until repealed in 2005.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes USDA to collect, tabulate and disseminate statistics on marketing agricultural products including market supplies, storage stocks, quantity, quality, and condition of such products in various positions in the marketing channel, utilization of sub-products, shipments, and unloads.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.87 hours per response.

Respondents: Primarily tobacco dealers and manufacturers including small businesses or organizations.

Estimated Number of Respondents: 30.

Estimated Total Annual Responses: 120.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 104.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information — including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the

burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be submitted electronically through *www.regulations.gov*. Comments also may be sent to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406. All comments received will be available for public inspection during regular business hours at the same address or through *www.regulations.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 16, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Services.

[FR Doc. 2013–20438 Filed 8–21–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–13–0061; NOP–13–05]

Notice of Funds Availability: Agricultural Management Assistance Organic Certification Cost-Share Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Funds Availability: Inviting Grant Applications from State Departments of Agriculture for the Agricultural Management Assistance Organic Certification Cost-Share Program.

SUMMARY: This Notice invites the following 16 eligible States: Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming, to submit a Grant Application (Application for Federal Assistance Standard Form 424) to the Agricultural Marketing Service (AMS) for organic certification cost-share funds. A total of $1,352,850 is available to the 16 designated States for this program in Fiscal Year 2013. Funds will provide cost-share assistance to organic crop and livestock producers certified under the USDA Organic Standards (7 CFR 205). Eligible States interested in obtaining cost-share funds for their organic producers must submit a grant application via *http://www.grants.gov*.

DATES: Grant applications must be received by the National Organic Program (NOP) no later than Friday, August 30, 2013.

ADDRESSES: Grant applications must be submitted via *Grants.Gov*. Paper applications will not be accepted. Instructions and additional information are available on the National Organic Program's Web site at *http://www.ams.usda.gov/NOPCostSharing*.

FOR FURTHER INFORMATION CONTACT: Rita Meade, Cost Share Coordinator, National Organic Program, USDA/AMS/NOP, Room 2648-South, Ag Stop 0268, 1400 Independence Avenue SW., Washington, DC 20250–0268; Telephone: (202) 720–3252. Email: *Rita.Meade@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This Organic Certification Cost-Share Program is part of the Agricultural Management Assistance (AMA) Program authorized under the Federal Crop Insurance Act (FCIA), as amended, (7 U.S.C. 1524). Under the applicable FCIA provisions, the Department is authorized to provide cost-share assistance to organic producers in the States of Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The AMS has allocated $1,352,850 for this organic certification cost-share program in Fiscal Year 2013. This program provides financial assistance to organic producers certified under the USDA Organic Regulations (7 CFR part 205), which were authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*).

To participate in the program, eligible States, through their State Departments of Agriculture, must complete an Application for Federal Assistance (Standard Form 424). State Department of Agriculture refers to agencies, commissions, or departments of State government responsible for implementing regulation, policy or programs on agriculture within their State. The program will provide cost-share assistance, through participating States, to organic crop and livestock producers receiving certification or incurring expenses for the continuation of certification by a USDA accredited certifying agent during the period of October 1, 2013 through September 30, 2014. The Department has determined that payments will be limited to 75% (seventy-five percent) of an individual producer's certification costs, up to a maximum of $750 (seven-hundred and fifty dollars).

To receive cost-share assistance, organic producers in participating States should contact their State agencies. Procedures for applying are outlined in the cost share policies and procedures at *http://1.usa.gov/OrganicCostShare*. The total amount of cost-share payments provided to any eligible producer under all AMA programs cannot exceed $50,000.

How to Submit Applications: To receive fund allocations to provide cost-share assistance, a State Department of Agriculture must complete an Application for Federal Assistance (Standard Form 424), and enter into a grant agreement with the AMS. Interested States must submit the Application for Federal Assistance (Standard Form 424) electronically via *Grants.gov*, the Federal grants Web site, at *http://www.grants.gov*. For information on how to use *Grants.Gov*, please consult *http://www.grants.gov/GetRegistered*. Applications must be filed by Friday, August 30, 2013. Grant agreements will be sent by the AMS to participating State Departments of Agriculture via express mail. The grant agreement must be signed by an official who has authority to apply for Federal assistance, and must be returned to the NOP at the address above by September 30, 2013.

The AMA Organic Certification Cost-Share Program is listed in the "Catalog of Federal Domestic Assistance" under number 10.171. Subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally-assisted programs. Additional information on the AMA Organic Certification Cost-Share Program can be found on the NOP's Web site at *http://www.ams.usda.gov/NOPCostSharing*.

Authority: 7 U.S.C. 1524

Dated: August 16, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20484 Filed 8–21–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. Number AMS–FV–13–0018]

United States Standards for Grades of Creole Onions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice would revise the United States Standards for Grades of Creole Onions, which were issued under the Agricultural Marketing Act of 1946. The Agricultural Marketing Service (AMS) is proposing to amend the similar varietal characteristic requirement to allow mixed colors of onions when designated as a mixed or specialty pack. In addition, AMS would correct language and remove the "Unclassified" category from the standards. This revision would update the standards to more accurately represent today's marketing practices and to provide the industry with greater flexibility.

DATES: Comments must be received by October 21, 2013.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Branch, Specialty Crops Inspection Division, Fruit and Vegetable Program, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; Fax: (540) 361–1199, or on the web at: *www.regulation.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. Comments can also be viewed as submitted, including any personal information you provide, on the *www.regulations.gov* Web site.

FOR FURTHER INFORMATION CONTACT: Dave Horner, Standardization Branch, Specialty Crops Inspection Division, (540) 361–1128. The current United States Standards for Grades of Creole Onions are available through the Specialty Crops Inspection Division Web site at *www.ams.usda.gov/scihome*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Program, and are available on the internet at *www.ams.usda.gov/scihome*.

AMS is revising the voluntary United States Standards for Grades of Creole Onions using the procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background and Proposed Notice

AMS has observed that the industry is packing mixed colors of onions, primarily in Idaho, Oregon, Washington, and Texas. Currently, the Creole onion standards do not permit mixing white onions with yellow to brownish red onions in the same pack. The proposed revision will provide the flexibility for shippers and packers to do so. AMS believes that permitting mixed colors when designated as a specialty or mixed pack will facilitate the marketing of onions by aligning the standards with current marketing practices. Therefore, AMS proposes to amend the similar varietal characteristic requirement in the U.S. No. 1 and U.S. No. 2 sections of the standards by adding "except color when designated as a specialty or mixed pack." The U.S. Combination grade section also would be affected by this change.

In addition, AMS would eliminate the "Unclassified" section. AMS is removing this section in standards, for all commodities, as they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary.

Furthermore, AMS would replace the capital "S" with a small "s" on the word "Seedstems" found in the U.S. No. 1 and U.S. No. 2 sections of the standards. The word "seedstems" was inadvertently capitalized when the Creole onion standards were reformatted.

AMS believes the proposed revisions will benefit the industry by allowing onion marketing to be more competitive in an evolving U.S. economy. This notice provides for a 60 day comment period for interested parties to comment on the proposed revisions in the standards.

Authority: 7 U.S.C. 1621—1627.

Dated: August 16, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20480 Filed 8–21–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST)

Title: NIST MEP Advanced Manufacturing Jobs and Innovation Accelerator Challenge (AMJIAC) Client Impact Survey.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission (new information collection).

Number of Respondents: 200.

Average Hours per Response: 15 minutes.

Burden Hours: 50.

Needs and Uses: The purpose of the AMJIAC is to provide strategic, catalytic funding for regional partnerships that have the potential to accelerate innovation and strengthen capacity in advanced manufacturing. The objectives of the challenge are to support job creation, encourage economic development, and enhance the competitiveness of U.S. manufacturers in regions across the country.

The information collected under this collection will be used to aid the NIST MEP to monitor and evaluate the Competitive Award Recipients participation in the AMJIAC program and to provide Congress with quantitative information required for Government-supported programs. The purpose of the collected information is as follows:

- Project Accountability.
- Project Evaluation.
- Award Recipient Evaluation.
- Analysis and Research.
- Reports to Stakeholders.
- Continuous Improvement.
- Knowledge Sharing.
- Identification of Distinctive Practices.

Affected Public: Business or other for-profit organizations; Not for profit institutions

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: August 16, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–20464 Filed 8–21–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–601]

Brass Sheet and Strip From Italy: Rescission of Antidumping Duty Review; 2012–2013

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is rescinding the administrative review of the antidumping duty order on brass sheet and strip from Italy for the period March 1, 2012, through February 28, 2013.

DATES: *Effective Date:* August 22, 2013.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1293.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2013, the Department initiated an administrative review of the antidumping duty order on brass sheet and strip from Italy for the period March 1, 2012, through February 28, 2013,[1] based on a request by Petitioners for a review of KME Italy SpA.[2] Petitioners withdrew their request for an administrative review on July 30, 2013.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the Initiation Notice. In this case, Petitioners withdrew their request within the 90-day deadline, and no other parties requested an administrative review of the antidumping duty order. Therefore, we are rescinding the administrative review of brass sheet and strip from Italy covering the period March 1, 2012, through February 28, 2013, in its entirety, in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all entries of brass sheet and strip from Italy. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

Notifications

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 14, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–20442 Filed 8–21–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC806

Pacific Fishery Management Council; Notice of Intent

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); request for comments; notice of public scoping meetings.

SUMMARY: NMFS and the Pacific Fishery Management Council (Council) announce their intent to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) of 1969 to analyze the long-term impacts on the human (biological, physical, social, and economic) environment of setting harvest specifications (including Overfishing Limits (OFLs), Acceptable Biological Catches (ABCs), and Annual Catch Limits (ACLs)) and management measures, and implementing harvest specifications and management measures in Federal regulations for 2015 and 2016, pursuant to the Pacific Coast Groundfish Fishery Management Plan.

DATES: Public scoping will be conducted through regular meetings of the Pacific Fishery Management Council and its advisory bodies continuing through the June 2014 meeting (see *http://www.pcouncil.org/council-operations/council-meetings/future-meetings/*). Written, faxed or emailed comments must be received by 5 p.m. Pacific Daylight time on September 23, 2013 (see **SUPPLEMENTARY INFORMATION**).

ADDRESSES: You may submit comments on issues and alternatives, identified by 0648–XC806 by any of the following methods:

- *Email: GroundfishSpex2015-16@noaa.gov*. Include RIN 0648–XC806 and enter Scoping Comments in the subject line of the message.
- *Fax:* 503–820–2299, Attention Kit Dahl.
- *Mail:* Dr. Donald McIsaac, Pacific Fishery Management Council, 7700 NE Ambassador Pl., Suite 101, Portland, OR, 97220, Attention Kit Dahl.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 25418, 25420 (May 1, 2013).

[2] Petitioners are GBC Metals, LLC, of Global Brass and Copper, Inc., dba Olin Brass; Heyco Metals, Inc.; Aurubis Buffalo, Inc.; PMX Industries, Inc.; and Revere Copper Products, Inc.

NMFS will accept anonymous comments. You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Pacific Fishery Management Council, phone: 503–820–2280, fax: 503–820–2299 and email: *kit.dahl@noaa.gov;* or Sarah Biegel, NMFS Northwest Region NEPA; email: *Sarah.T.Biegel@noaa.gov.*

Electronic Access

This **Federal Register** document is available on the Government Printing Office's Web site at: *www.gpoaccess.gov/fr/index/html.*

SUPPLEMENTARY INFORMATION:

Background for Agency Action

There are more than 90 species managed under the Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP). These groundfish stocks support an array of commercial, recreational, and Indian tribal fishing interests in state and Federal waters off the coasts of Washington, Oregon, and California. In addition, groundfish are also harvested incidentally in non-groundfish fisheries, most notably, the trawl fisheries for pink shrimp and California halibut.

The amount of each Pacific Coast groundfish species or species complex that is available for harvest in a specific year is referred to as an Annual Catch Limit (ACL). The groundfish fishery regulations also include a collection of management measures intended to keep the total catch of each groundfish species or species complex at or below the ACL. The groundfish harvest specifications and management measures are set at least biennially.

The Proposed Action

Using the "best available scientific information," the proposed action is to establish harvest specifications every 2 years, including the overfishing limits (OFLs), acceptable biological catches (ABCs), and annual catch limits (ACLs) for each management unit, consistent with the policies and procedures the Council has established for these actions and the requirements of the Groundfish FMP; the Magnuson-Stevens Act (MSA)—particularly the 10 National Standards enumerated in § 301(a) of the MSA; and other applicable law.

Estimates of harvest specification values for a long-term period are used to evaluate environmental impacts into the future. Because harvest specifications must be based on the best available scientific information, and one or more new or updated stock assessments become available every 2 years, NMFS has determined that harvest specifications will be published in Federal regulations every 2 years for the subsequent 2-year period. However, the evaluation of the long-term impacts of setting harvest specifications and related management measures for the foreseeable future is intended to encompass the range of likely impacts that could occur over more than just the next biennial management period (2015–16).

Seven Pacific Coast groundfish species are currently "overfished" and managed under rebuilding plans implemented by secretarial amendment. Within the rebuilding plans, T_{TARGET} is the key rebuilding parameter. T_{TARGET} is the projected year by which an overfished species will be rebuilt. Any change to T_{TARGET} must be demonstrated by the need to rebuild the stock in as short a time as possible, taking into account the status and biology of the stock, the needs of fishing communities, and the interaction of the stock within the marine ecosystem.

Every 2 years the Council will consider the best available scientific information (principally new or updated stock assessments) and determine whether it is necessary to adjust any of the existing harvest specifications or management measures necessary to achieve but not exceed ACLs. Adjustments to harvest specifications may involve changing the underlying harvest control rule. These adjustments must be consistent with the MSA and the Groundfish FMP.

In the absence of explicit Council action, harvest specification values based on default harvest control rules for one or more stocks may be published in Federal regulations. The Council is considering the establishment of criteria for determining these default rules through Amendment 24 to the Pacific Groundfish FMP, and these default rules may be part of this proposed action. During any biennial decision-making process, the Council may depart from these default values by deciding to modify the harvest control rule for one or more management unit.

Alternatives

NEPA requires that agencies evaluate reasonable alternatives to the proposed action in an EIS, which address the purpose and need for agency action. The Council is scheduled to adopt a preliminary range of alternatives for analysis and public review at its November 1–6, 2013, meeting. Alternatives use other methods to determine default harvest specifications. Related management measures, including allocation of fishing opportunity among various fishery participants, are also part of each alternative. In addition to choosing a preferred method for determining default harvest control rules, the Council may choose to modify the underlying harvest control rules for one or more stocks, resulting in an ACL different from the default value. Routine management measures, as defined in the Groundfish FMP, will be used unless a conservation need requires the adoption of a new management measure not previously described in Federal regulations. The alternatives may also include changes to current rebuilding plans if the best available scientific information shows that the objective of rebuilding the stock by T_{TARGET} cannot be met with the current harvest control rule. The Council is scheduled to confirm its choice of a preferred alternative at its June 20–25, 2014, meeting.

Preliminary Identification of Environmental Issues

A principal objective of the scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in depth in the EIS. If, during the preparation of this EIS, NMFS determines that a finding of no significant impact can be supported, it may prepare an Environmental Assessment (EA) and issue a retraction of this notice. Alternatively, NMFS may still continue with the preparation of an EIS. Information and analysis prepared for this action also may be used when scoping future groundfish harvest specifications and management measure actions to help decide whether to prepare an EA or EIS.

Public Scoping Process

Public scoping will occur throughout the Council's decision-making process. All decisions during the Council process benefit from written and oral public comments delivered prior to or during the Council meeting. These public comments are considered integral to scoping for developing this EIS. Council meetings that offer opportunities for public involvement include: the September 12–17, 2013, meeting in Boise, Idaho (The Riverside Hotel—Boise, 2900 Chinden Blvd., Boise, ID 83714); the November 1–6, 2013 meeting in Costa Mesa, California (Hilton Orange County/Costa Mesa, 3050 Bristol Street, Costa Mesa, CA 92626); the April 5–10, 2014, meeting in Vancouver, Washington (Hilton Vancouver Washington, 301 W. Sixth Street, Vancouver, WA 98660); and the

June 20–25, 2014, meeting in Garden Grove, California (Hyatt Regency Orange County, 11999 Harbor Blvd., Garden Grove, CA 92840). For further information on these meetings, visit the Council's Web site, *http://www.pcouncil.org/council-operations/council-meetings/future-meetings/.*

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kris Kleinschmidt *Kris.Kleinschmidt@noaa.gov* (503)820–2280 at least 5 days prior to the meeting date.

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

Dated: August 19, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–20523 Filed 8–21–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC797

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting; Correction

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

ACTION: Notice of correction to a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Spiny Dogfish Advisory Panel (AP) will meet to develop a Fishery Performance Report for the Spiny Dogfish fishery in preparation for the Council and the Council's Scientific and Statistical Committee review of specifications that have been set for the 2014 fishing year.

DATES: The meeting will be held on Wednesday, August 28, 2013 at 1 a.m. until 4 p.m.

ADDRESSES: The meeting will be held via webinar with a listening station also available at the Council address below. Webinar link: *http://mafmc.adobeconnect.com/dogfish/*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on August 8, 2013 (78 FR 48421). The original notice stated that the meeting ends at 12 noon. This notice corrects the time of the webinar. All other previously-published information remains unchanged.

The Advisory Panel will develop a Fishery Performance Report for consideration by the Council and the Council's SSC as they review spiny dogfish management measures established for the 2014 fishing year.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 16, 2013.

William D. Chappell,

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

[FR Doc. 2013–20448 Filed 8–21–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC561

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental To Conducting Maritime Strike Operations by Eglin Air Force Base in the Gulf of Mexico

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

ACTION: Notice; issuance of incidental harassment authorization.

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 U.S. Air Force (USAF), Eglin Air Force Base (Eglin AFB), to take marine mammals, by harassment, incidental to Maritime Strike Operations in the Gulf of Mexico (GOM). The USAF's activities are considered military readiness activities.

DATES: Effective August 19, 2013, through August 18, 2014.

ADDRESSES: An electronic copy of the authorization, the application containing a list of the references used in this document, and the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as " . . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. 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" provisions 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

NMFS received an application on December 11, 2012, from Eglin AFB for the taking, by harassment, of marine mammals incidental to Maritime Strike Operations within the Eglin Gulf Test and Training Range (EGTTR). A revised application was submitted on January 22, 2013, which provided updated marine mammal information. The EGTTR is described as the airspace over the Gulf of Mexico (GOM) that is controlled by Eglin AFB. The planned test location in the EGTTR is Warning Area 151 (W–151), which is located approximately 17 miles offshore from Santa Rosa Island, specifically sub-area W–151A.

The Maritime Strike operations may potentially impact marine mammals at or near the water surface. Marine mammals could potentially be harassed, injured, or killed by exploding and non-exploding projectiles, and falling debris. However, based on analyses provided in the USAF's Environmental Assessment (EA), Eglin's IHA application, including the required mitigation, and for reasons discussed later in this document, NMFS does not anticipate that Eglin's Maritime Strike exercises will result in any serious injury or mortality to marine mammals. Eglin AFB has requested authorization to take two cetacean species by Level A and Level B harassment. The requested species include: Atlantic bottlenose dolphin (*Tursiops truncatus*) and Atlantic spotted dolphin (*Stenella frontalis*).

Description of the Specified Activity

This section describes the Maritime Strike missions that have the potential to affect marine mammals present within the test area. Maritime Strike operations, a "military readiness activity" as defined under 16 U.S.C. 703 note, involve detonations above the water, near the water surface, and under water within the EGTTR. These missions involve multiple types of live munitions identified in Tables 1 and 2 below. The Maritime Strike operations are described in more detail in the following paragraphs.

The Maritime Strike program was developed in response to the increasing threats at sea posed by operations conducted from small boats. The first phase of the Maritime Strike program focused on detecting and tracking boats using various sensors, simulated weapons engagements, and testing with inert munitions. The final phase, and the subject of this notice, consists of testing the effectiveness of live munitions on small boat threats. The proposed Maritime Strike activities would involve the use of multiple types of live munitions in the EGTTR against small boat targets, at all desired surface and water depth scenarios (maximum depth of 10 feet below the surface) necessary to carry out the Tactics Development and Evaluation (TD&E) Program. Multiple munitions (bombs, missiles, and gunner rounds) and aircraft would be used to meet the objectives of the Maritime Strike program (Table 1). Because the tests focus on weapon/target interaction, particular aircraft are not specified for a given test as long as it meets the delivery parameters. The munitions would be deployed against static, towed, and remotely controlled boat targets. Static and controlled targets consist of stripped boat hulls with plywood simulated crews and systems. Damaged boats would be recovered for data collection. Test data collection and operation of remotely controlled boats would be conducted from an instrumentation barge anchored on-site, which would also provide a platform for cameras and weapon-tracking equipment. Target boats would be positioned 300 to 600 feet from the instrument barge, depending on the munition.

TABLE 1—LIVE MUNITIONS AND AIRCRAFT

Munitions	Aircraft (not associated with specific munitions)
GBU–10 laser-guided Mk-84 bomb	F–16C fighter aircraft.
GBU–24 laser-guided Mk-84 bomb	F–16C+ fighter aircraft.
GBU–31 Joint Direct Attack Munition, global positioning system guided Mk-84 bomb	F–15E fighter aircraft.
GBU–12 laser-guided Mk-82 bomb	A–10 fighter aircraft.
GBU–38 Joint Direct Attack Munition, global positioning system guided Mk-82 bomb	B–1B bomber aircraft.
GBU–54 Laser Joint Direct Attack Munition, laser-guided Mk-82 bomb	B–52H bomber aircraft.
CBU–103/B bomb	MQ–1/9 unmanned aerial vehicle.
AGM–65E/L/K/G2 Maverick air-to-surface missile	
AGM–114 Hellfire air-to-surface missile.	
M–117 bomb.	
PGU–12 high explosive incendiary 30 mm rounds.	
M56/PGU–28 high explosive incendiary 20mm rounds.	

Live testing will include three detonation options: (1) Above the water surface; (2) at the water surface; and (3) below the water surface (two depths). The number of each type of munition, height or depth of detonation, explosive material, and net explosive weight (NEW) of each munition is provided in Table 2.

TABLE 2—MARITIME STRIKE MUNITIONS

Type of munition	Total number of live munitions	Number of detonations by height/depth	Warhead—explosive material	Net explosive weight per munition
GBU–10	1	Water Surface: all	MK–84—Tritonal	945 lbs.
GBU–24	1	Water Surface: all	MK–84—Tritonal	945 lbs.
GBU–31 (JDAM)	13 20 feet AGL: 3 5 feet underwater: 3 10 feet underwater: 3	Water Surface: 4	MK–84—Tritonal	945 lbs (MK–84).
GBU–12	1	Water Surface: all	MK–82—Tritonal	192 lbs.
GBU–38 (JDAM)	13 20 feet AGL: 3 5 feet underwater: 3 10 feet underwater: 3	Water Surface: 4	MK–82—Tritonal	192 lbs (MK–82).
GBU–54 (LJDAM)	1	Water Surface: all	MK–82—Tritonal	192 lbs (MK–82).
AGM–65E/L/K/G2 (Maverick).	2 each (8 total)	Water Surface: all	WDU–24/B penetrating blast-fragmentation warhead.	86 lbs.
CBU–103	4	Water Surface: all	202 Blu-97/B Combined Effects Bomblets (0.63 lbs each).	127 lbs.
AGM–114 (Hellfire).	4	Water Surface: all	High Explosive Anti-Tank (HEAT) tandem anti-armor metal augmented charge.	20 lbs.
M–117	6 Water Surface: 3	20 feet AGL: 3	750 lb blast/fragmentation bomb, used the same way as MK–82—Tritonal.	386 lbs (Tritonal).
PGU–12 HEI 30 mm.	1,000	Water Surface: all	30x173 mm caliber with aluminized RDX explosive. Designed for GAU–8/A Gun System.	0.1 lbs.
M56/PGU–28 HEI 20 mm.	1,500	Water Surface: all	20x120 mm caliber with aluminized Comp A–4 HEI. Designed for M61 and M197 Gun System.	0.02 lbs (Comp A–4 HEI).

Maritime Strike missions are scheduled to occur over an approximate two- to three-week period in August 2013. Missions will occur on weekdays during daytime hours only, with one or two missions occurring per day. All activities will take place within the EGTTR. Activities will occur only in Warning Area W–151, and specifically in sub-area W–151A. W–151A extends approximately 60 nm offshore and has a surface area of 2,565 nm^2 (8,797 km^2). Water depths range from about 30 to 350 m and include continental shelf and slope zones; however, most of W–151A occurs over the continental shelf, in water depths less than 250 m. Maritime Strike operations will occur in the shallower, northern inshore portion of W–151A, in water depth of about 35 m (see Figure 2–1 in Eglin's IHA application for a map of the test area).

To ensure safety, prior to conducting Maritime Strike exercises, Eglin will conduct a pre-test target area clearance procedure for people and protected species. Support vessels will be deployed around a defined safety zone to ensure that commercial and recreational boats do not accidentally enter the area. Before delivering the ordnance, mission aircraft will make a dry run over the target area to ensure that it is clear of commercial and recreational boats (at least two aircraft would participate in each test). Due to the limited duration of the flyover and potentially high speed and altitude, pilots will not be able to survey for marine species. In addition, an E–9A surveillance aircraft will survey the target area for nonparticipating vessels and other objects on the water surface. Based on the results from an acoustic impacts analysis for live ordnance detonations, a separate disturbance zone around the target will be established for the protection of marine species. The size of the zone will be based on the distance to which energy- and pressure-related impacts will extend for the various type of ordnance listed in Table 2 and will not necessarily be the same size as the human safety zone. Based on the acoustic modeling result, the largest possible distance from the target will be 3,526 m (2.2 miles), which corresponds to the 177 dB Level B harassment threshold for 945 lb NEW munitions detonated at 10 ft underwater (Table 5). At least two of the support vessels will monitor for marine mammals around the target area. Maritime Strike missions will not proceed until the target area is determined to be clear of unauthorized personnel and protected species.

In addition to vessel-based monitoring, one to three video cameras will be positioned on an instrumentation barge anchored on-site. The camera configuration and actual number of cameras used would depend on the specific test being conducted. The cameras are typically used for situational awareness of the target area and surrounding area, and could also be used for monitoring the test site for the presence of marine species. A marine species observer will be located in the Eglin control tower, along with mission personnel, to monitor the video feed before and during test activities.

After each test, floating targets will be inspected to identify and render safe any unexploded ordnance (UXO), including fuzes or intact munitions. The Eglin Air Force Explosive Disposal Team will be on hand for each test. UXO that cannot be removed will be detonated in place, which could result in the sinking of the target vessel. Once the area has been cleared for re-entry, test personnel will retrieve target debris and marine species observers will

survey the area for any evidence of adverse impacts to protected species.

Comments and Responses

A notice of receipt of Eglin AFB's application and NMFS' proposal to issue an IHA to the USAF, Eglin AFB, published in the **Federal Register** on June 4, 2013 (78 FR 33357). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (MMC) and a member of the public. The comment from the private citizen opposed the issuance of an authorization without any specific substantiation for why the authorization should not be issued. Following are the comments from the MMC and NMFS' responses.

Comment 1: The MMC expressed their belief that all permanent hearing loss should be considered a serious injury and recommends that NMFS propose to issue regulations under section 101(a)(5)(A) of the MMPA and a letter of authorization, rather than an incidental harassment authorization, for any proposed activities expected to cause a permanent threshold shift (PTS).

Response: PTS is considered an injury to the auditory system, but not a serious injury. NMFS PTS thresholds are based on the onset of PTS, meaning about a 30% incident of PTS (Ketten 1995; DON 1998) and a 50% likelihood of eardrum rupture (which is often recoverable (Kerr and Byrne, 1975). An animal would either need to be exposed to the sound above this threshold for a long amount of time (not likely with explosives) or a much higher level (meaning being closer to the source) than the threshold in order to incur a significantly more serious degree of PTS. Because of the short duration of the proposed activity (few weeks) combined with the density of marine mammals, it is unlikely that a marine mammal would even randomly enter the area where more severe PTS would be a risk. However, when mitigation measures and likely avoidance of an area of high levels of training activities are considered, it becomes highly unlikely. Additionally, some degree of presbycusis is fairly common in the wild (i.e., high-frequency hearing loss), especially with older animals, and there is no data suggesting whether, or at what significantly greater degree of PTS, this reduced hearing might potentially lead to mortality. NMFS does not believe that serious injury will result from this activity and that therefore it is not necessary to issue regulations through section 101(a)(5)(A), rather, an IHA may be issued.

Comment 2: The MMC expressed concern regarding Eglin AFB's use of two different, and seemingly contrary, methods (i.e., total net explosive weight of all ordnance in a single burst versus net explosive weight of a single bomblet as numerous individual burts) for estimating zones of exposure. The MMC recommended that NMFS withhold issuing the IHA until (1) the USAF has modeled the various scenarios consistently for all operations that involve more than one bomb, bomblet, missile, or round and (2) has consulted with the MMC regarding resolution of this issue.

Response: The MMC may be confusing calculation methods for determining zones of exposures (the area of potential impact defined as a radius in the application) with estimating takes of each species for each threshold and criteria (total number of animals exposed to noise levels that may result in Level A or Level B harassment). These calculations are two separate processes. With the exception of the gunnery rounds and CBU–103 cluster bombs, the zones of exposure for all other munitions were based on the detonation/burst of one munition at a given depth; not the total number of munitions planned to be detonated for the duration of the test. On the other hand, Level A and Level B take estimates of each species were calculated by summing together all detonations proposed to occur for each munition at a given depth. The methodology and analytical approach for determining the exposure zones and estimating the number of marine mammal takes was fully explained in the IHA application, the Notice of Proposed IHA (78 FR 33357, June 4, 2013), as well as in the previous IHAs issued to Eglin AFB, and supporting documents issued for this activity. Readers should refer to those documents for additional information, but a summary follows.

Zones of exposure to determine Level A and Level B Harassment impact areas were calculated as the product of the impact area of a single burst of each munition and the number of bursts planned to occur during each testing scenario. For this analysis, a "burst" must be sufficiently spaced in time or location such that it could: (1) Affect a different set of marine mammals; or (2) affect the same individuals multiple times. The firing sequence for the 20-mm and 30-mm rounds consists of expending a large number of individual rounds at one target, all of which detonate within one second of each other. Due to the tight spacing in time and location, for modeling purposes, each burst of 1,000 or 1,500 rounds is treated as a single detonation. On the other hand, the CBU–103 cluster bombs are treated differently based on the dispersed pattern and timing of individual bomblet detonations. The CBU–103's 202 bomblets are released mid-air and spread out to cover a larger target area, and may detonate over the course of a few to several seconds. Therefore the 202 bomblets are not combined as a single burst for calculating the zones of exposure for Level A and Level B Harassment.

Using this approach, Eglin AFB estimated the number of marine mammal takes using the adjusted density estimates for each species, the ZOI of each type of ordnance deployed, and the total number of live ordnance events. The results are presented in Table 8.

Description of Marine Mammals in the Area of the Specified Activity

There are 28 species of marine mammals documented as occurring in Federal waters of the northern GOM. However, species with likely occurrence in the test area, and the subject of Eglin's incidental take request, are the Atlantic bottlenose dolphin (*Tursiops truncatus*) and Atlantic spotted dolphin (*Stenella frontalis*). These two species are frequently sighted in the northern GOM over the continental shelf, in a water depth range that encompasses the Maritime Strike test location (Garrison *et al.*, 2008; Navy, 2007; Davis *et al.*, 2000). Dwarf sperm whales (*Kogia sima*) and pygmy sperm whales (*K. breviceps*) are occasionally sighted over the shelf, but are not considered regular inhabitants (Davis *et al.*, 2000). The remaining cetacean species are primarily considered to occur at or beyond the shelf break (water depth of approximately 200 m), and are not included in the proposed take authorization. Of the 28 marine mammal species or stocks that may occur in the northern GOM, only the sperm whale is listed as endangered under the ESA and as depleted under the MMPA. Sperm whale occurrence in the area of the proposed activity is unlikely because almost all reported sightings have occurred in water depths greater than 200 m. Occurrence in the deeper portions of W–151 is possible, although based on reported sightings locations, density is expected to be low. Therefore, Eglin AFB has not requested and NMFS has not proposed the issuance of take authorizations for this species. Eglin AFB's MMPA application contains a detailed discussion on the description, status, distribution, regional distribution, diving behavior, and acoustics and hearing for the marine mammals in the action area.

More detailed information on these species can be found in Wursig *et al.* (2000), Eglin's EA (see **ADDRESSES**), and in the NMFS U.S. Atlantic and GOM Stock Assessment Reports (SARs; Waring *et al.*, 2011). This latter document is available at: *http://www.nefsc.noaa.gov/publications/tm/tm210/*. The West Indian manatee (*Trichechus manatus*) is managed by the U.S. Fish and Wildlife Service and is not considered further in this proposed IHA **Federal Register** notice.

Density estimates for bottlenose dolphin and spotted dolphin were derived from two sources. Bottlenose dolphin density estimates were derived from a habitat modeling project conducted for portions of the EGTTR, including the Maritime Strike project area (Garrison, 2008). NMFS developed habitat models using recent aerial survey line transect data collected during winter and summer. The surveys covered nearshore and continental shelf waters (to a maximum depth of 200 meters), with the majority of effort concentrated in waters from the shoreline to 20 meters depth. Marine species encounter rates during the surveys were corrected for sighting probability and the probability that animals were available on the surface to be seen. In combination with remotely sensed environmental data/habitat parameters (water depth, sea surface temperature and chlorophyll), these data were used to develop habitat models for cetaceans within the continental shelf and coastal waters of the eastern GOM. The technical approach, described as Generalized Regression and Spatial Prediction, spatially projects the species-habitat relationship based on distribution of environmental factors, resulting in predicted densities for un-sampled locations and times. The spatial density model can therefore be used to predict density in unobserved areas and at different times of year based upon the monthly composite SST and chlorophyll datasets derived from satellite data. Similarly, the spatial density model can be used to predict relative density for any sub-region within the surveyed area.

Garrison (2008) produced bottlenose dolphin density estimates at various spatial scales within the EGTTR. At the largest scale, density data were aggregated into four principal strata categories: North-Inshore, North-Offshore, South-Inshore, and South-Offshore. Densities for these strata were provided in the published survey report. Unpublished densities were also provided for smaller blocks (sub-areas) corresponding to airspace units and a number of these sub-areas were combined to form larger zones. Densities in these smaller areas were provided to Eglin AFB in Excel© spreadsheets by the report author.

For both large areas and sub-areas, regions occurring entirely within waters deeper than 200 meters were excluded from predictions, and those straddling the 200 meter isobath were clipped to remove deep water areas. In addition, because of limited survey effort, density estimates beyond 150 meters water depth are considered invalid. The environmental conditions encountered during the survey periods (February and July/August) do not necessarily reflect the range of conditions potentially encountered throughout the year. In particular, the transition seasons of spring (April–May) and fall (October–November) have a very different range of water temperatures. Accordingly, for predictions outside of the survey period or spatial range, it is necessary to evaluate the statistical variance in predicted values when attempting to apply the model. The coefficient of variation (CV) of the predicted quantity is used to measure the validity of model predictions. According to Garrison (2008), the best predictions have CV values of approximately 0.2. When CVs approach 0.7, and particularly when they exceed 1.0, the resulting model predictions are extremely uncertain and are considered invalid.

Based upon the preceding discussion, the bottlenose dolphin density estimate used in this document is the median density corresponding to sub-area 137 (see Figure 3–1 in Eglin AFB's IHA application). The planned Maritime Strike test location lies within this sub-area. Within this block, Garrison (2008) provided densities based upon one year (2007) and five-year monthly averages for SST and chlorophyll. The 5-year average is considered preferable. Only densities with a CV rounded to 0.7 or lower (i.e., 0.64 and below) were considered. The CV for June in this particular block is 0.62. Density estimates for bottlenose dolphin are provided in Table 3.

Atlantic spotted dolphin density was derived from Fulling *et al.* (2003), which describes the results of mammal surveys conducted in association with fall ichthyoplankton surveys from 1998 to 2001. The surveys were conducted by NMFS personnel from the U.S.-Mexico border to southern Florida, in water depths of 20 to 200 meters. Using the software program DISTANCE©, density estimates were generated for East and West regions, with Mobile Bay as the dividing point. The East region is used in this document. Densities were provided for Atlantic spotted dolphins and unidentified *T. truncatus/S. frontalis* (among other species). The unidentified *T. truncatus/S. frontalis* category is treated as a separate species group with a unique density. Density estimates from Fulling *et al.* (2003) were not adjusted for sighting probability (perception bias) or surface availability (availability bias) [g(0) = 1] in the original survey report, likely resulting in underestimation of true density. Perception bias refers to the failure of observers to detect animals, although they are present in the survey area and available to be seen. Availability bias refers to animals that are in the survey area, but are not able to be seen because they are submerged when observers are present. Perception bias and availability bias result in the underestimation of abundance and density numbers (negative bias).

Fulling *et al.* (2003) did not collect data to correct density for perception and availability bias. However, in order to address this negative bias, Eglin AFB has adjusted density estimates based on information provided in available literature. There are no published g(0) correction factors for Atlantic spotted dolphins. However, Barlow (2006) estimated g(0) for numerous marine mammal species near the Hawaiian Islands, including offshore pantropical spotted dolphins (*Stenella attenuata*). Separate estimates for this species were provided for group sizes of 1 to 20 animals [g(0) = 0.76], and greater than 20 animals [g(0) = 1.00]. Although Fulling *et al.* (2003) sighted some spotted dolphin groups of more than 20 individuals, the 0.76 value is used as a more conservative approach. Barlow (2006) provides the following equation for calculating density:

$$\text{Density (\# animals/km}^2\text{)} = \frac{(n)\,(S)\,(f_0)}{(2L)\,(g_0)}$$

Where

n = number of animal group sightings on effort

S = mean group size

f(0) = sighting probability density at zero perpendicular distance (influenced by species detectability and sighting cues such as body size, blows, and number of animals in a group)

L = transect length completed (km)

g(0) = probability of seeing a group directly on a trackline (influenced by perception bias and availability bias)

Because (n), (S), and (f_0) cannot be directly incorporated as independent values due to lack of the original information, we substitute the variable

$X_{species}$ which incorporates all three values, such that $X_{species} = (n)(S)(f_0)$ for a given species. This changes the density equation to:

$$D = \frac{X_{species}}{(2L)(g_0)}$$

Using the minimum density estimates provided in Fulling et al. (2003) for Atlantic spotted dolphins and solving for $X_{SpottedDolphin}$:

$$0.201 = \frac{X_{Spotted\ Dolphin}}{(2)(816)(1.0)}$$

$X_{SpottedDolphin} = 328.032.$

Placing this value of $X_{SpottedDolphin}$ and the revised g(0) estimate (0.76) in the original equation results in the following adjusted density estimate for Atlantic spotted dolphin:

$$D_{Adjusted} = \frac{328.032}{(2)(816)(0.76)}$$

$D_{Adjusted} = 0.265$

Using the same method, adjusted density for the unidentified *T. truncatus/S. frontalis* species group is 0.009 animals/km^2. There are no variances attached to either of these recalculated density values, so overall confidence in these values is unknown.

TABLE 3—MARINE MAMMAL DENSITY ESTIMATES

Species	Density (animals/km^2)
Bottlenose dolphin [1]	0.455
Atlantic spotted dolphin [2]	0.265
Unidentified bottlenose dolphin/Atlantic spotted dolphin [2]	0.009

[1] Source: Garrison, 2008; adjusted for observer and availability bias by the author.
[2] Source: Fulling *et al.*, 2003; adjusted for negative bias based on information provided by Barlow (2003; 2006).

Potential Effects of the Specified Activity on Marine Mammals

Potential impacts from the detonation of explosives include non-lethal injury (Level A harassment) and disturbance (Level B harassment). Takes in the form of mortality are neither anticipated nor requested. The number of marine mammals potentially impacted by Maritime Strike operations is based on impulsive noise and pressure waves generated by ordinance detonation at or near the water surface. Exposure to energy or pressure resulting from these detonations could result in injury or harassment of marine mammal species. The number of Maritime Strike missions generally corresponds to the number of live ordnance expenditures shown in Table 2. However, the number of bursts modeled for the CBU–103 cluster bomb is 202, which is the number of individual bomblets per bomb. Also, the 20 mm and 30 mm gunnery rounds were modeled as one burst each.

Criteria and thresholds for estimating the exposures from a single explosive activity on marine mammals were established for the Seawolf Submarine Shock Test Final Environmental Impact Statement (FEIS) ("SEAWOLF") and subsequently used in the USS WINSTON S. CHURCHILL (DDG 81) Ship Shock FEIS ("CHURCHILL") (DoN, 1998 and 2001). We adopted these criteria and thresholds in a final rule on the unintentional taking of marine animals occurring incidental to the shock testing which involved large explosives (65 FR 77546; December 12, 2000). Because no large explosives (greater than 1000 lbs NEW) would be used by Eglin AFB during the specified activities, a revised acoustic criterion for small underwater explosions (i.e., 23 pounds per square inch [psi] instead of previous acoustic criteria of 12 psi for peak pressure over all exposures) has been established to predict onset of TTS.

Thresholds and Criteria for Injurious Physiological Impacts

Single Explosion

For injury, NMFS uses dual criteria, eardrum rupture (i.e. tympanic-membrane injury) and onset of slight lung injury, to indicate the onset of injury. The threshold for tympanic-membrane (TM) rupture corresponds to

a 50 percent rate of rupture (i.e., 50 percent of animals exposed to the level are expected to suffer TM rupture). This value is stated in terms of an Energy Flux Density Level (EL) value of 1.17 inch pounds per square inch (in-lb/in2), approximately 205 dB re 1 microPa²-sec.

The threshold for onset of slight lung injury is calculated for a small animal (a dolphin calf weighing 26.9 lbs), and is given in terms of the "Goertner modified positive impulse," indexed to 13 psi-msec (DoN, 2001). This threshold is conservative since the positive impulse needed to cause injury is proportional to animal mass, and therefore, larger animals require a higher impulse to cause the onset of injury. This analysis assumed the marine species populations were 100 percent small animals. The criterion with the largest potential impact range (most conservative), either TM rupture (energy threshold) or onset of slight lung injury (peak pressure), will be used in the analysis to determine Level A exposures for single explosive events.

For mortality and serious injury, we use the criterion corresponding to the onset of extensive lung injury. This is conservative in that it corresponds to a 1 percent chance of mortal injury, and yet any animal experiencing onset severe lung injury is counted as a lethal exposure. For small animals, the threshold is given in terms of the Goertner modified positive impulse, indexed to 30.5 psi-msec. Since the Goertner approach depends on propagation, source/animal depths, and animal mass in a complex way, the actual impulse value corresponding to the 30.5 psi-msec index is a complicated calculation. To be conservative, the analysis used the mass of a calf dolphin (at 26.9 lbs) for 100 percent of the populations.

Multiple Explosions

For multiple explosions, the CHURCHILL approach had to be extended to cover multiple sound events at the same training site. For multiple exposures, accumulated energy over the entire training time is the natural extension for energy thresholds since energy accumulates with each subsequent shot (detonation); this is consistent with the treatment of multiple arrivals in CHURCHILL. For positive impulse, it is consistent with the CHURCHILL final rule to use the maximum value over all impulses received.

Thresholds and Criteria for Non-Injurious Physiological Effects

To determine the onset of TTS (non-injurious harassment)—a slight, recoverable loss of hearing sensitivity, there are dual criteria: an energy threshold and a peak pressure threshold. The criterion with the largest potential impact range (most conservative), either the energy or peak pressure threshold, will be used in the analysis to determine Level B TTS exposures. We refer the reader to the following sections for descriptions of the thresholds for each criterion.

Single Explosion—TTS-Energy Threshold

The TTS energy threshold for explosives is derived from the Space and Naval Warfare Systems Center (SSC) pure-tone tests for TTS (Schlundt *et al.*, 2000; Finneran and Schlundt, 2004). The pure-tone threshold (192 dB as the lowest value) is modified for explosives by (a) interpreting it as an energy metric, (b) reducing it by 10 dB to account for the time constant of the mammal ear, and (c) measuring the energy in 1/3-octave bands, the natural filter band of the ear. The resulting threshold is 182 dB re 1 microPa²-sec in any 1/3-octave band.

Single Explosion—TTS-Peak Pressure Threshold

The second threshold applies to all species and is stated in terms of peak pressure at 23 psi (about 225 dB re 1 μPa). This criterion was adopted for Precision Strike Weapons (PSW) Testing and Training by Eglin Air Force Base in the Gulf of Mexico (NMFS, 2005). It is important to note that for small shots near the surface (such as in this analysis), the 23-psi peak pressure threshold generally will produce longer impact ranges than the 182-dB energy metric. Furthermore, it is not unusual for the TTS impact range for the 23-psi pressure metric to actually exceed the without-TTS (behavioral change without onset of TTS) impact range for the 177-dB energy metric.

Thresholds and Criteria for Behavioral Effects

Single Explosion

For a single explosion, to be consistent with CHURCHILL, TTS is the criterion for Level B harassment. In other words, because behavioral disturbance for a single explosion is likely to be limited to a short-lived startle reaction, use of the TTS criterion is considered sufficient protection and therefore behavioral effects (Level B behavioral harassment without onset of TTS) are not expected for single explosions.

Multiple Explosions—Without TTS

For multiple explosions, the CHURCHILL approach had to be extended to cover multiple sound events at the same training site. For multiple exposures, accumulated energy over the entire uninterrupted firing time is the natural extension for energy thresholds since energy accumulates with each subsequent shot (detonation); this is consistent with the treatment of multiple arrivals in CHURCHILL. Because multiple explosions could occur within a discrete time period, a new acoustic criterion-behavioral disturbance without TTS is used to account for behavioral effects significant enough to be judged as harassment, but occurring at lower noise levels than those that may cause TTS.

The threshold is based on test results published in Schlundt *et al.* (2000), with derivation following the approach of the CHURCHILL FEIS for the energy-based TTS threshold. The original Schlundt *et al.* (2000) data and the report of Finneran and Schlundt (2004) are the basis for thresholds for behavioral disturbance without TTS. During this study, instances of altered behavior sometimes began at lower exposures than those causing TTS; however, there were many instances when subjects exhibited no altered behavior at levels above the onset-TTS levels. Regardless of reactions at higher or lower levels, all instances of altered behavior were included in the statistical summary. The behavioral disturbance without TTS threshold for tones is derived from the SSC tests, and is found to be 5 dB below the threshold for TTS, or 177 dB re 1 microPa²-sec maximum energy flux density level in any 1/3-octave band at frequencies above 100 Hz for cetaceans.

Summary of Thresholds and Criteria for Impulsive Sounds

The effects, criteria, and thresholds used in the assessment for impulsive sounds are summarized in Table 4. The criteria for behavioral effects without physiological effects used in this analysis are based on use of multiple explosives from live, explosive firing during Maritime Strike exercises.

TABLE 4—CURRENT NMFS ACOUSTIC CRITERIA WHEN ADDRESSING HARASSMENT FROM EXPLOSIVES

Effect	Criteria	Metric	Threshold	Effect
Mortality	Onset of Extensive Lung Injury.	Goertner modified positive impulse	indexed to 30.5 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Mortality.
Injurious Physiological.	50 percent Tympanic Membrane Rupture.	Energy flux density	1.17 in-lb/in^2 (about 205 dB re 1 microPa^2-sec).	Level A.
Injurious Physiological.	Onset Slight Lung Injury.	Goertner modified positive impulse	indexed to 13 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Level A.
Non-injurious Physiological.	TTS	Greatest energy flux density level in any 1/3-octave band (> 100 Hz for toothed whales and > 10 Hz for baleen whales)—for total energy over all exposures.	182 dB re 1 microPa^2-sec	Level B.
Non-injurious Physiological.	TTS	Peak pressure over all exposures	23 psi	Level B.
Non-injurious Behavioral.	Multiple Explosions Without TTS.	Greatest energy flux density level in any 1/3-octave (> 100 Hz for toothed whales and > 10 Hz for baleen whales)—for total energy over all exposures (multiple explosions only).	177 dB re 1 microPa^2-sec	Level B.

Anticipated Effects on Habitat

The primary source of marine mammal habitat impact is noise resulting from live Maritime Strike missions. However, the noise does not constitute a long-term physical alteration of the water column or bottom topography. In addition, the activity is not expected to affect prey availability, is of limited duration, and is intermittent in time. Surface vessels associated with the missions are present in limited duration and are intermittent as well. Therefore, it is not anticipated that marine mammal utilization of the waters in the project area will be affected, either temporarily or permanently, as a result of mission activities.

Other sources that could potentially impact marine mammal habitat were considered and include the introduction of fuel, debris, ordnance, and chemical materials into the water column. The potential effects of each were analyzed in the Environmental Assessment and determined to be insignificant. The analyses are summarized in the following paragraphs (for a complete discussion of potential effects, please refer to section 3.3 in the EA).

Metals typically used to construct bombs, missiles, and gunnery rounds include copper, aluminum, steel, and lead, among others. Aluminum is also present in some explosive materials. These materials would settle to the seafloor after munitions detonate. Metal ions would slowly leach into the substrate and the water column, causing elevated concentrations in a small area around the munitions fragments. Some of the metals, such as aluminum, occur naturally in the ocean at varying concentrations and would not necessarily impact the substrate or water column. Other metals, such as lead, could cause toxicity in microbial communities in the substrate. However, such effects would be localized to a very small distance around munitions fragments and would not significantly affect the overall habitat quality of sediments in the northeastern GOM. In addition, metal fragments would corrode, degrade, and become encrusted over time.

Chemical materials include explosive byproducts and also fuel, oil, and other fluids associated with remotely controlled target boats. Explosive byproducts would be introduced into the water column through detonation of live munitions. Explosive materials would include 2,4,6-trinitrotoluene (TNT) and RDX, among others. Various byproducts are produced during and immediately after detonation of TNT and RDX. During the very brief time that a detonation is in progress, intermediate products may include carbon ions, nitrogen ions, oxygen ions, water, hydrogen cyanide, carbon monoxide, nitrogen gas, nitrous oxide, cyanic acid, and carbon dioxide (Becker, 1995). However, reactions quickly occur between the intermediates, and the final products consist mainly of water, carbon monoxide, carbon dioxide, and nitrogen gas, although small amounts of other compounds are typically produced as well.

Chemicals introduced into the water column would be quickly dispersed by waves, currents, and tidal action, and eventually become uniformly distributed. A portion of the carbon compounds such as carbon monoxide and carbon dioxide would likely become integrated into the carbonate system (alkalinity and pH buffering capacity of seawater). Some of the nitrogen and carbon compounds, including petroleum products, would be metabolized or assimilated by phytoplankton and bacteria. Most of the gas products that do not react with the water or become assimilated by organisms would be released into the atmosphere. Due to dilution, mixing, and transformation, none of these chemicals are expected to have significant impacts on the marine environment.

Explosive material that is not consumed in a detonation could sink to the substrate and bind to sediments. However, the quantity of such materials is expected to be inconsequential. Research has shown that if munitions function properly, nearly full combustion of the explosive materials will occur, and only extremely small amounts of raw material will remain. In addition, any remaining materials would be naturally degraded. TNT decomposes when exposed to sunlight (ultraviolet radiation), and is also degraded by microbial activity (Becker, 1995). Several types of microorganisms have been shown to metabolize TNT. Similarly, RDX decomposes by hydrolysis, ultraviolet radiation exposure, and biodegradation.

Based on this information, the proposed Maritime Strike activities would not have any impact on the food or feeding success of marine mammals in the northern GOM. Additionally, no loss or modification of the habitat used by cetaceans in the GOM is expected. Marine mammals are anticipated to temporarily vacate the area of live fire events. However, these events usually do not last more than 90 to 120 min at

a time, and animals are anticipated to return to the activity area during periods of non-activity. Thus, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

Mitigation

In order to issue an incidental take authorization (ITA) under sections 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity and other means of effecting the least practicable 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 (where relevant). The NDAA of 2004 amended the MMPA as it relates to military readiness activities and the ITA process such that "least practicable impact" shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the "military readiness activity". The Maritime Strike activities described in Eglin AFB's application are considered military readiness activities.

Visual Mitigation

Areas to be used for Maritime Strike operations would be visually monitored for marine mammal presence from several platforms before, during, and after the commencement of the mission. Eglin AFB would provide experienced protected species survey personnel, vessels, and equipment as required for vessel-based surveys. The primary observers would be marine scientists with over 1,000 hours of marine mammal surveying experience collectively. Additionally, all range clearance personnel involved with the missions would receive NMFS-approved training developed by the Eglin Natural Resources Section. The designated protected species survey vessels would be two 25-ft (7.6 m) Parker 2520 boats with a fully enclosed pilothouse and tower. These vessels provide large viewing areas and observers would be stationed approximately 16-ft (4.9 m) above the water surface. Each vessel will have two observers and each observer will be equipped with binoculars. Observers will rotate on a regular basis to prevent eye fatigue as needed. Additional protected species survey vessels can be made available if required.

If the presence of one or more marine mammals is detected, the target area will be avoided. In addition, monitoring will continue during the mission. If marine mammals are detected at any time, the mission will halt immediately and relocate as necessary or be suspended until the marine mammal has left the area. The visual mitigation procedures for Maritime Strike operations are outlined below.

Pre-mission: The purposes of pre-mission monitoring are to: (1) Evaluate the test site for environmental suitability of the mission; and (2) verify that the Zone of Influence (ZOI) is free of visually detectable marine mammals, as well as potential indicators of these species. The area of the ZOI surveyed would be based on the distance to the largest Level B harassment threshold for the specific ordnance involved in a given test. For example, the largest ZOI would be 3,526 m (2.2 mi), which corresponds to the distance to the Level B threshold (177 dB) for 945 lb munitions detonated at 3 m (10 ft) underwater. The smallest ZOI would be 37 m (0.02 mi), which is the distance to the Level B threshold (23 psi) for 20 mm gunnery rounds. Table 5 provides the ZOI ranges for all the ordnance types and detonation depths proposed for Maritime Strike operations. On the morning of the Maritime Strike mission, the test director and safety officer would confirm that there are no issues that would preclude mission execution and that weather is adequate to support mitigation measures.

(A) Two Hours Prior to Mission

Mission-related surface vessels would be on site at least two hours prior to the mission. Observers on board at least one vessel would assess the overall suitability of the test site based on environmental conditions (e.g., sea state) and presence/absence of marine mammals or marine mammal indicators. This information would be related to the safety officer.

(B) One and One-half Hours Prior to Mission

Vessel-based surveys and video camera surveillance would begin one and one-half hours prior to live weapon deployment. Surface vessel observers would survey the applicable ZOI and relay all marine species and indicator sightings, including the time of sighting and direction of travel, if known, to the safety officer. Surveys would continue for approximately one hour. During this time, mission personnel in the test area would also observe for marine species as feasible. If marine mammals or indicators are observed within the applicable ZOI, the test range would be declared "fouled," which would signify to mission personnel that conditions are such that a live ordnance drop cannot occur (e.g., protected species or civilian vessels are in the test area). If no marine mammals or indicators are observed, the range will be declared "green."

(C) One-Half Hour Prior to Mission

At approximately 30 minutes prior to live weapon deployment, marine species observers would be instructed to leave the test site and remain outside the safety zone, which on average would be 9.5 miles from the detonation point, (the actual size would be determined by weapon NEW and method of delivery) during conduct of the mission. Once the survey vessels have arrived at the perimeter of the safety zone (approximately 30 minutes after being instructed to leave, depending on actual travel time) the mission would be allowed to proceed. Monitoring for protected species would continue from the periphery of the safety zone while the mission is in progress. The other safety boat crews would also be instructed to observe for marine mammals. Due to the distance from the target site, these observations would be considered supplemental and would not be relied upon as the primary monitoring method. After survey vessels leave the area, marine species monitoring would continue from the tower through the video feed received from the high definition cameras on the instrument barge.

(D) Execution of Mission

Immediately prior to live weapons drop, the test director and safety officer will communicate to confirm the results of marine mammal surveys and the appropriateness of proceeding with the mission. The safety officer will have final authority to proceed with, postpone, move, or cancel the mission. The mission will be postponed or moved if:

(1) Any marine mammal is visually detected within the applicable ZOI. Postponement will continue until the animal(s) that caused the postponement is confirmed to be outside of the applicable ZOI due to the animal swimming out of the range.

(2) Large schools of fish or large flocks of birds feeding at the surface are observed within the applicable ZOI. Postponement will continue until these potential indicators are confirmed to be outside the applicable ZOI.

In the event of a postponement, pre-mission monitoring will continue as long as weather and daylight hours allow.

Post-mission Monitoring: Post mission monitoring will be designed to

determine the effectiveness of pre-mission visual mitigation by reporting sightings of any dead or injured marine mammals. If post-mission surveys determine that an injury or lethal take of a marine mammal has occurred, the next Maritime Strike mission will be suspended until the test procedure and the monitoring methods have been reviewed with NMFS and appropriate changes made. Post-mission monitoring surveys will be conducted by the same observers that conducted pre-mission surveys, and will commence as soon as EOD personnel declare the test area safe. Vessels will move into the applicable ZOI from outside the safety zone and monitor for at least 30 minutes, concentrating on the area down-current of the test site. The monitoring team will document any marine mammals that were killed or injured as a result of the test and immediately contact the local marine mammal stranding network and NMFS to coordinate recovery and examination of any dead animals. The species, number, location, and behavior of any animals observed will be documented and reported to the Eglin Natural Resources Section.

Multiple offshore Air Force missions have been successfully executed in the general vicinity of the proposed Maritime Strike test location (W–151 of the EGTTR). These missions have involved both inert (no explosives) and live weapons testing, and include the following:

- 2009 Stand-off Precision Guided Munitions (SOPGM) live missile tests
- 2012 Maritime Strike inert drops
- 2013 Longbow live missile test (in-air detonation)
- 2013 Combat Hammer Maritime WESP missions (inert drops in the Gulf and strafing in the Choctawhatchee Bay)

During these missions, vessel-based observers surveyed for protected marine species (marine mammals and sea turtles) and species indicators. They also provided support to enforce human safety exclusion zones.

All live and inert missions were conducted in a variety of sea states and weather conditions that encompass the environmental conditions likely to be encountered during Maritime Strike activities. While no marine mammals were sighted within the various take threshold zones (mortality, Level A and B harassment zones) during any of the live tests (i.e., SOPGM and Longbow missile), survey personnel judged that they were able to adequately observe the sea surface and there was reasonable likelihood that marine mammals would have been detected if present. There have been no documented marine mammal takes throughout Eglin's history of activities in the Gulf of Mexico. Therefore, based on these factors, Eglin AFB and NMFS expect that trained protected species observers would be able to adequately survey and clear mortality zones (maximum of 457 m) and effectively communicate any marine mammal sightings to test directors. Further, we expect that test directors would be able to act quickly to delay live weapon drops should protected species be observed.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable 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, practicability of implementation, and impact on the effectiveness of the military-readiness activity.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, the required mitigation measures provide the means of effecting the least practicable 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, practicability 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, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

NMFS has included the following measures in the Maritime Strike IHA. They are:

(1) Eglin will track their use of the EGTTR for test firing missions and protected species observations, through the use of mission reporting forms.

(2) A summary annual report of marine mammal observations and Maritime Strike activities will be submitted to the NMFS Southeast Regional Office (SERO) and the Office of Protected Resources either at the time of a request for renewal of an IHA or 90 days after expiration of the current IHA if a new IHA is not requested. This annual report must include the following information: (i) Date and time of each Maritime Strike exercise; (ii) a complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of Maritime Strike exercises on marine mammal populations; and (iii) results of the Maritime Strike exercise monitoring, including numbers by species/stock of any marine mammals noted injured or killed as a result of the missions and number of marine mammals (by species if possible) that may have been harassed due to presence within the activity zone.

(3) If any dead or injured marine mammals are observed or detected prior to testing, or injured or killed during live fire, a report must be made to NMFS by the following business day.

(4) Any unauthorized takes of marine mammals (i.e., injury or mortality) must be immediately reported to NMFS and to the respective stranding network representative.

Estimated Take by Incidental Harassment

As it applies to a "military readiness activity", the definition of harassment is (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].

Takes by Level A and B harassment are anticipated as a result of the Maritime Strike mission activities. The exercises are expected to only affect animals at or very near the surface of the water. Cetaceans in the vicinity of the exercises may incur temporary changes in behavior, and/or temporary changes

in their hearing thresholds. Based on the proposed mitigation and monitoring measures described earlier in this document, no serious injury or mortality of marine mammals is anticipated as a result of Maritime Strike activities, and no takes by serious injury or mortality are proposed to be authorized.

Estimating the impacts to marine mammals from underwater detonations is difficult due to complexities of the physics of explosive sound under water and the limited understanding with respect to hearing in marine mammals. Assessments of impacts from Maritime Strike exercises use, and improve upon, the criteria and thresholds for marine mammal impacts that were developed for the shock trials of the USS SEAWOLF and the USS WINSTON S. CHURCHILL (DDG–81) (Navy, 1998; 2001). The criteria and thresholds used in those actions were adopted by NMFS for use in calculating incidental takes from explosives. Criteria for assessing impacts from Eglin AFB's Maritime Strike exercises include: (1) mortality, as determined by exposure to a certain level of positive impulse pressure (expressed as pounds per square inch per millisecond or psi-msec); (2) injury, both hearing-related and non-hearing related; and (3) harassment, as determined by a temporary loss of some hearing ability and behavioral reactions. Due to the mitigation measures proposed by NMFS for implementation, mortality resulting from the resulting sounds generated into the water column from detonations was determined to be highly unlikely and was not considered further by Eglin AFB or NMFS.

Permanent hearing loss is considered an injury and is termed permanent threshold shift (PTS). NMFS, therefore, categorizes PTS as Level A harassment. Temporary loss of hearing ability is termed TTS, meaning a temporary reduction of hearing sensitivity which abates following noise exposure. TTS is considered non-injurious and is categorized as Level B harassment. NMFS recognizes dual criteria for TTS, one based on peak pressure and one based on the greatest 1/3 octave sound exposure level (SEL) or energy flux density level (EFDL), with the more conservative (i.e., larger) of the two criteria being selected for impacts analysis (note: SEL and EFDL are used interchangeably, but with increasing scientific preference for SEL). The peak pressure metric used to predict TTS is 23 pounds per square inch (psi).

Documented behavioral reactions occur at noise levels below those considered to cause TTS in marine mammals (Finneran *et al.*, 2002; Schlundt *et al.*, 2000; Finneran and Schlundt, 2004). In controlled experimental situations, behavioral effects are typically defined as alterations of trained behaviors. Behavioral effects in wild animals are more difficult to define but may include decreased ability to feed, communicate, migrate, or reproduce. Abandonment of an area due to repeated noise exposure is also considered a behavioral effect. Analyses in other sections of this document refer to such behavioral effects as "sub-TTS Level B harassment." Schlundt *et al.* (2000) exposed bottlenose dolphins and beluga whales to various pure-tone sound frequencies and intensities in order to measure underwater hearing thresholds. Masking is considered to have occurred because of the ambient noise environment in which the experiments took place. Sound levels were progressively increased until behavioral alterations were noted (at which point the onset of TTS was presumed). It was found that decreasing the sound intensity by 4 to 6 dB greatly decreased the occurrence of anomalous behaviors. The lowest sound pressure levels, over all frequencies, at which altered behaviors were observed, ranged from 178 to 193 dB re 1 µPa for the bottlenose dolphins and from 180 to 196 dB re 1 µPa for the beluga whales. Thus, it is reasonable to consider that sub-TTS (behavioral) effects occur at approximately 6 dB below the TTS-inducing sound level, or at approximately 177 dB in the greatest 1/3 octave band EFDL/SEL.

Table 4 (earlier in this document) summarizes the relevant thresholds for levels of noise that may result in Level A harassment (injury) or Level B harassment via TTS or behavioral disturbance to marine mammals. Mortality and injury thresholds are designed to be conservative by considering the impacts that would occur to the most sensitive life stage (e.g., a dolphin calf).

The following three factors were used to estimate the potential noise effects on marine mammals from Maritime Strike operations: (1) The zone of influence, which is the distance from the explosion to which a particular energy or pressure threshold extends; (2) the density of animals potentially occurring within the zone of influence; and (3) the number of events.

The zone of influence is defined as the area or volume of ocean in which marine mammals could potentially be exposed to various noise thresholds associated with exploding ordnance. Table 5 provides the estimated ZOI radii for the Maritime Strike ordnance. At this time, there are no empirical data or information that would allow NMFS to establish a peak pressure criterion for sub-TTS behavioral disruption.

TABLE 5—ESTIMATED RANGE FOR A ZONE OF IMPACT (ZOI) DISTANCE FOR THE MARITIME STRIKE ORDNANCE

[In meters]

Munition	Height/depth of detonation	Mortality	Level A harassment		Level B harassment		
		30.5 psi-msec	205 dB EFD *	13 psi-msec	182 dB EFD *	23 psi	177 dB EFD *
GBU–10	Water Surface	202	275	362	1023	1280	1361
GBU–24	Water Surface	202	275	362	1023	1280	1361
GBU–31 (JDAM)	Water Surface	202	275	362	1023	1280	1361
	20 feet AGL	0	0	0	0	0	0
	5 feet underwater	385	468	700	2084	1281	2775
	10 feet underwater.	457	591	836	2428	1280	3526
GBU–12	Water Surface	114	161	243	744	752	1020
GBU–38 (JDAM)	Water Surface	114	161	243	744	752	1020
	20 feet AGL	0	0	0	0	0	0
	5 feet underwater	239	280	445	1411	752	2070
	10 feet underwater.	279	345	532	1545	752	2336
GBU–54 (LJDAM).	Water Surface	114	161	243	744	752	1020

TABLE 5—ESTIMATED RANGE FOR A ZONE OF IMPACT (ZOI) DISTANCE FOR THE MARITIME STRIKE ORDNANCE—Continued

[In meters]

Munition	Height/depth of detonation	Mortality	Level A harassment		Level B harassment		
		30.5 psi-msec	205 dB EFD*	13 psi-msec	182 dB EFD*	23 psi	177 dB EFD*
AGM–65E/L/K/G2 (Maverick).	Water Surface	84	124	187	618	575	846
CBU–103	Water Surface	9	231	21	947	111	1335
AGM–114 (Hellfire).	Water Surface	46	70	105	425	353	618
M–117	20 feet AGL	0	0	0	0	0	0
	Water Surface	147	203	293	847	950	1125
PGU–13 HEI 30 mm.	Water Surface	0	6	7	31	60	55
M56/PGU–28 HEI 20 mm.	Water Surface	0	0	0	16	37	27

*In greatest 1/3-octave band above 10 Hz or 100 Hz.

Density estimates for marine mammals occurring in the EGTTR are provided in Table 3. As discussed above, densities were derived from the results of published documents authored by NMFS personnel. Density is nearly always reported for an area (e.g., animals per square kilometer). Analyses of survey results may include correction factors for negative bias, such as the Garrison (2008) report for bottlenose dolphins. Even though Fulling *et al.* (2003) did not provide a correction for Atlantic spotted dolphins or unidentified bottlenose/spotted dolphins, Eglin AFB adjusted those densities based on information provided in other published literature (Barlow 2003; 2006). Although the study area appears to represent only the surface of the water (two-dimensional), density actually implicitly includes animals anywhere within the water column under that surface area. Density estimates usually assume that animals are uniformly distributed within the prescribed area, even though this is likely rarely true. Marine mammals are often clumped in areas of greater importance, for example, in areas of high productivity, lower predation, safe calving, etc. Density can occasionally be calculated for smaller areas, but usually there are insufficient data to calculate density for such areas. Therefore, assuming an even distribution within the prescribed area is the typical approach.

In addition, assuming that marine mammals are distributed evenly within the water column does not accurately reflect behavior. Databases of behavioral and physiological parameters obtained through tagging and other technologies have demonstrated that marine animals use the water column in various ways. Some species conduct regular deep dives while others engage in much shallower dives, regardless of bottom depth. Assuming that all species are evenly distributed from surface to bottom is almost never appropriate and can present a distorted view of marine mammal distribution in any region. Therefore, a depth distribution adjustment is applied to marine mammal densities in this document (Table 6). By combining marine mammal density with depth distribution information, a three-dimensional density estimate is possible. These estimates allow more accurate modeling of potential marine mammal exposures from specific noise sources.

TABLE 6—DEPTH DISTRIBUTION OF MARINE MAMMALS IN THE MARITIME STRIKE TEST AREA

Species	Depth distribution	Reference
Bottlenose dolphin	Daytime: 96% at <50 m, 4% at >50 m; Nightime: 51% at <50 m, 8% at 50–100 m, 19% at 101–250 m, 13% at 251–450 m, and 9% at >450 m.	Klatsky *et al.* (2007)
Atlantic spotted dolphin	76% at <10 m, 20% at 10–20 m, and 4% at 21–60 m.	Davis *et al.* (1996)

As mentioned previously, the number of Maritime Strike activities generally corresponds to the number of live ordnance expenditures, as shown in Table 2. However, the number of bursts modeled for the CBU–103 cluster bomb is 202, which is the number of individual bomblets per bomb. Also, the 20 mm and 30 mm gunnery rounds were modeled as one burst each.

Table 7 indicates the modeled potential for lethality, injury, and non-injurious harassment (including behavioral harassment) to marine mammals in the absence of mitigation measures. The numbers represent total impacts for all detonations combined. Mortality was calculated as approximately one-half an animal for bottlenose dolphins and about 0.1 animals for spotted dolphins. It is expected that, with implementation of the management practices described below, potential impacts would be mitigated to the point that there would be no mortality takes. Based on the low mortality exposure estimates calculated by the acoustic model combined with the implementation of mitigation measures, zero marine mammals are expected to be affected by pressure levels associated with mortality. Therefore, Eglin AFB has requested an IHA, as opposed to an LOA.

TABLE 7—MODELED NUMBER OF MARINE MAMMALS POTENTIALLY AFFECTED BY MARITIME STRIKE MISSIONS

Species	Mortality	Level A harassment	Level B harassment (TTS)	Level B harassment (behavioral)
Bottlenose dolphin	0.524	2.008	30.187	61.069
Atlantic spotted dolphin	0.145	1.050	16.565	31.345
Unidentified bottlenose dolphin/Atlantic spotted dolphin	0.010	0.040	0.597	1.208
Total	0.679	3.098	47.349	93.622

Table 8 provides Eglin AFB's the annual number of marine mammals, by species, authorized for taking by Level A harassment and Level B harassment, incidental to Maritime Strike operations. It should be noted that these takes are authorized without consideration of the effectiveness of Eglin AFB's proposed mitigation measures. As indicated in Table 8, Eglin AFB and NMFS estimate that approximately three marine mammals could potentially be exposed to injurious Level A harassment noise levels (205 dB re 1 μPa ^{2}-s or higher).

TABLE 8—NUMBER OF MARINE MAMMALS TAKES

Species	Level A harassment	Level B harassment (TTS)	Level B harassment (behavioral)
Bottlenose dolphin	2	30	61
Atlantic spotted dolphin	1	16	32
Unidentified bottlenose dolphin/Atlantic spotted dolphin	0	1	1
Total	3	47	94

Approximately 47 marine mammals may be exposed annually to non-injurious (TTS) Level B harassment associated with the 182 dB re 1 μPa^2-s threshold. TTS results from fatigue or damage to hair cells or supporting structures and may cause disruption in the processing of acoustic cues; however, hearing sensitivity is recovered within a relatively short time. Based on Eglin AFB and NMFS' estimates, up to 94 marine mammals may experience a behavioral response to these exercises associated with the 177 dB re 1 μPa^2-s threshold (see Table 8). NMFS has determined that this number will be significantly lower due to the expected effectiveness of the mitigation measures included in the IHA.

Negligible Impact and Determinations

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, and intensity, and duration of harassment; and (4) the context in which the takes occur.

The takes from Level B harassment will be due to potential behavioral disturbance and TTS. The takes from Level A harassment will be due to potential tympanic-membrane (TM) rupture. Activities would only occur over a timeframe of two to three weeks in August 2013, with one or two missions occurring per day. It is possible that some individuals may be taken more than once if those individuals are located in the exercise area on two different days when exercises are occurring. However, multiple exposures are not anticipated to have effects beyond

Level A and Level B harassment

While animals may be impacted in the immediate vicinity of the activity, because of the small ZOIs (compared to the vast size of the GOM ecosystem where these species live) and the short duration of the Maritime Strike operations, NMFS has determined that there will not be a substantial impact on marine mammals. The activity is not expected to impact rates of recruitment or survival of marine mammals because neither mortality (which would remove individuals from the population) nor serious injury are anticipated to occur. In addition, the activity will not occur in areas (and/or times) of significance for the marine mammal populations potentially affected by the exercises (e.g., feeding or resting areas, reproductive areas), and the activities will only occur in a small part of their overall range, so the impact of any potential temporary displacement will be negligible and animals are expected to return to the area after the cessations of activities. Although the activity could result in Level A (TM rupture) and Level B (behavioral disturbance and TTS) harassment of marine mammals, the level of harassment is not anticipated to impact rates of recruitment or survival of marine mammals because the number of exposed animals is expected to be low due to the short term and site specific nature of the activity, and the type of effect would not be detrimental to rates of recruitment and survival.

Additionally, the mitigation and monitoring measures to be implemented (described earlier in this document) are expected to further minimize the potential for harassment. The protected species surveys will require Eglin AFB to search the area for marine mammals, and if any are found in the live fire area, then the exercise will be suspended until the animal(s) has left the area or relocated. Moreover, marine species observers located in the Eglin control tower will monitor the high-definition video feed from cameras located on the instrument barge anchored on-site for the presence of protected species. Furthermore, Maritime Strike missions will be delayed or rescheduled if the sea state is greater than a 4 on the Beaufort Scale at the time of the test. In addition,

Maritime Strike missions will occur no earlier than two hours after sunrise and no later than two hours prior to sunset to ensure adequate daylight for pre- and post-mission monitoring.

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 Eglin AFB's Maritime Strike operations will result in the incidental take of marine mammals, by Level A and Level B harassment, and that the taking from the Maritime Strike exercises 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 would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Eglin AFB initiated consultation with the Southeast Region, NMFS, under section 7 of the ESA regarding the effects of this action on ESA-listed species and critical habitat under the jurisdiction of NMFS. The consultation was completed and a biological opinion issued on May 6, 2013. The biological opinion analyzed the effects of the exercise on five species of sea turtles. Gulf sturgeon, smalltooth sawfish, sperm whales, and Gulf sturgeon critical habitat. The biological opinion concluded that the action, as proposed, may adversely affect four species of sea turtles (loggerhead, Kemp's ridley, green, and leatherback). In addition, the project may affect, but is not likely to adversely affect, hawksbill sea turtles, smalltooth sawfish, Gulf sturgeon, sperm whales, and Gulf sturgeon critical habitat.

National Environmental Policy Act (NEPA)

Eglin AFB released a Draft Environmental Assessment (EA) on the Maritime Strike Operations. NMFS made this EA available on the permits Web page. On May 30, 2013, Eglin AFB issued a Final EA and a Finding of No Significant Impact (FONSI) on the Maritime Strike Operations.

In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS reviewed the information contained in Eglin AFB's EA and determined the EA accurately and completely described the preferred action alternative, a reasonable range of alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred and non-preferred alternatives. Based on this review and analysis, NMFS adopted Eglin AFB's PEA under 40 CFR 1506.3, and issued its own FONSI statement on issuance of an annual authorization under section 101(a)(5) of the MMPA.

Proposed Authorization

As a result of these determinations, NMFS authorizes the take of two species of marine mammals incidental to Eglin AFB's Maritime Strike operations in the GOM provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 13, 2013.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC762

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Wharf Recapitalization Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to construction activities as part of a wharf recapitalization project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting public comment on its proposal to issue an incidental harassment authorization (IHA) to the Navy to take, by harassment only, two species of marine mammal during the specified activity.

DATES: Comments and information must be received no later than September 23, 2013.

ADDRESSES: Comments on this proposal should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application and any supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* In the case of problems accessing these documents, please call the contact listed above.

National Environmental Policy Act

The Navy has prepared a draft Environmental Assessment (*Wharf C–2 Recapitalization at Naval Station Mayport, FL*) in accordance with the National Environmental Policy Act (NEPA) and the regulations published by the Council on Environmental Quality. It is posted at the aforementioned site. NMFS will independently evaluate the EA and determine whether or not to adopt it. We may prepare a separate NEPA analysis and incorporate relevant portions of Navy's EA by reference. Information in the Navy's application, EA, and this notice collectively provide the environmental information related to proposed issuance of this IHA for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No

Significant Impact (FONSI), prior to a final decision on the incidental take authorization request.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than 1 year, pursuant to requirements and conditions contained within an Incidental Harassment Authorization. The establishment of prescriptions through either specific regulations or an authorization requires notice and opportunity for public comment.

NMFS has defined "negligible impact" in 50 CFR 216.103 as " . . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." Except with respect to certain activities not pertinent here, section 3(18) of 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; 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." The former is termed Level A harassment and the latter is termed Level B harassment.

Summary of Request

On April 4, 2013, we received a request from the Navy for authorization of the taking, by Level B harassment only, of marine mammals incidental to pile driving in association with the Wharf C–2 recapitalization project at Naval Station Mayport, Florida (NSM). That request was modified on May 9 and June 5, 2013, and a final version, which we deemed adequate and complete, was submitted on August 7, 2013. In-water work associated with the project is expected to be completed within the one-year timeframe of the proposed IHA (December 1, 2013 through November 30, 2014). Two species of marine mammal are expected to be affected by the specified activities: bottlenose dolphin (*Tursiops truncatus truncatus*) and Atlantic spotted dolphin (*Stenella frontalis*). These species may occur year-round in the action area.

Wharf C–2 is a single level, general purpose berthing wharf constructed in 1960. The wharf is one of NSM's two primary deep-draft berths and is one of the primary ordnance handling wharfs. The wharf is a diaphragm steel sheet pile cell structure with a concrete apron, partial concrete encasement of the piling and an asphalt paved deck. The wharf is currently in poor condition due to advanced deterioration of the steel sheeting and lack of corrosion protection, and this structural deterioration has resulted in the institution of load restrictions within 60 ft of the wharf face. The purpose of this project is to complete necessary repairs to Wharf C–2. Please refer to Appendix A of the Navy's application for photos of existing damage and deterioration at the wharf, and to Appendix B for a contractor schematic of the project plan.

Effects to marine mammals from the specified activity are expected to result from underwater sound produced by vibratory and impact pile driving. In order to assess project impacts, the Navy used thresholds recommended by NMFS, outlined later in this document. The Navy assumed practical spreading loss and used empirically-measured source levels from representative pile driving events to estimate potential marine mammal exposures. Predicted exposures are described later in this document. The calculations predict that only Level B harassment would occur associated with pile driving activities, and required mitigation measures further ensure that no more than Level B harassment would occur.

Description of the Specified Activity

Specific Geographic Region and Duration

NSM is located in northeastern Florida, at the mouth of the St. Johns River and adjacent to the Atlantic Ocean (see Figure 2–1 of the Navy's application). The St. Johns River is the longest river in Florida, with the final 35 mi flowing through the city of Jacksonville. This portion of the river is significant for commercial shipping and military use. At the mouth of the river, near the action area, the Atlantic Ocean is the dominant influence and typical salinities are above 30 ppm. Outside the river mouth, in nearshore waters, moderate oceanic currents tend to flow southward parallel to the coast. Sea surface temperatures range from around 16 °C in winter to 28 °C in summer.

The specific action area consists of the NSM turning basin, an area of approximately 2,000 by 3,000 ft containing ship berthing facilities at sixteen locations along wharves around the basin perimeter. The basin was constructed during the early 1940s by dredging the eastern part of Ribault Bay (at the mouth of the St. Johns River), with dredge material from the basin used to fill parts of the bay and other low-lying areas in order to elevate the land surface. The basin is currently maintained through regular dredging at a depth of 50 ft, with depths at the berths ranging from 30–50 ft. The turning basin, connected to the St. Johns River by a 500-ft-wide entrance channel, will largely contain sound produced by project activities, with the exception of sound propagating east into nearshore Atlantic waters through the entrance channel (see Figure 2–2 of the Navy's application). Wharf C–2 is located in the northeastern corner of the Mayport turning basin.

The project is expected to require a maximum of 50 days of in-water vibratory pile driving work over a 12-month period. It is not expected that significant impact pile driving would be necessary, on the basis of expected subsurface driving conditions and past experience driving piles in the same location. However, twenty additional days of impact pile driving are included in the specified activity as a contingency, for a total of 70 days in-water pile driving considered over the 12-month timeframe of the proposed IHA.

Description of Specified Activity

In order to rehabilitate Wharf C–2, the Navy proposes to install a new steel king pile/sheet pile (SSP) bulkhead. An SSP system consists of large vertical king piles with paired steel sheet piles driven inbetween and connected to the ends of the king piles. The wall is anchored at the top with fill then placed behind the wall. Finally, a concrete cap is formed along the top and outside face of the wall to tie the entire structure together and provide a berthing surface for vessels. The new bulkhead will be designed for a 50-year service life. Please see Figures 1–1 through 1–4 and Table 1–1 in the Navy's application for project schematics, descriptive photographs, and further information about the pile types to be used. The project requires additional work (both in and out of water) that is not considered to have the potential for impacts to marine mammals; these project components are described in the Navy's EA.

The project will require installation of approximately 120 single sheet piles and 119 king piles (all steel) to support the bulkhead wall, and fifty polymeric (plastic) fender piles. Vibratory installation of the steel piles will require approximately 45 days, with approximately 5 additional days needed for vibratory installation of the plastic piles. King piles are long I-shaped guide piles that provide the structural support for the bulkhead wall. Sheet piles, which form the actual wall, will be driven in pairs between the king piles. Once piles are in position, it is expected that less than 60 seconds of vibratory driving would be required per pile to reach the required depth. Time interval between driving of each pile pair will vary, but is expected to be a minimum of several minutes due to time required for positioning, etc. One template consists of the combination of five king piles and four sheet pile pairs; it is expected that three such templates may be driven per day. Polymeric fender piles will be installed after completion of the bulkhead, at an expected rate of approximately ten piles per day.

Impact pile driving is not expected to be required for most piles, but may be used as a contingency in cases when vibratory driving is not sufficient to reach the necessary depth. A similar project completed at an adjacent wharf required impact pile driving on only seven piles (over the course of two days). Impact pile driving, if it were required, could occur on the same day as vibratory pile driving, but driving rigs would not be operated simultaneously.

Description of Sound Sources and Distances to Thresholds

Impacts from the specified activity on marine mammals are expected to result from the production of underwater sound; therefore, we provide a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal.

Background

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds, and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the "loudness" of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards), and is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Ambient Sound

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (e.g., waves, earthquakes, ice, atmospheric sound), biological (e.g., sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (e.g., vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.*, 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- Biological: Marine mammals can contribute significantly to ambient sound levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- Anthropogenic: Sources of ambient sound related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping sound typically dominates the total ambient sound for frequencies between 20 and

300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (e.g., a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise "ambient" or "background" sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

The underwater acoustic environment in the Mayport turning basin is likely to be dominated by noise from day-to-day port and vessel activities. The basin is sheltered from most wave noise, but is a high-use area for naval ships, tugboats, and security vessels. When underway, these sources can create noise between 20 Hz and 16 kHz (Lesage *et al.*, 1999), with broadband noise levels up to 180 dB. While there are no current measurements of ambient noise levels in the turning basin, it is likely that levels within the basin periodically exceed the 120 dB threshold and, therefore, that the high levels of anthropogenic activity in the basin create an environment far different from quieter habitats where behavioral reactions to sounds around the 120 dB threshold have been observed (e.g., Malme *et al.*, 1984, 1988).

Sound Source Characteristics

In-water construction activities associated with the project would include vibratory pile driving and possibly impact pile driving. The sounds produced by these activities fall into one of two sound types: pulsed and non-pulsed (defined in the following). The distinction between these two general sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (e.g., Ward, 1997 in Southall *et al.*, 2007). Please see Southall *et al.*, (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (e.g., explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than 1 sec), broadband, atonal transients (ANSI, 1986; Harris, 1998; NIOSH, 1998; ISO, 2003; ANSI, 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (e.g., rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

Sound Thresholds

NMFS currently uses acoustic exposure thresholds as important tools to help better characterize and quantify the effects of human-induced noise on marine mammals. These thresholds have predominantly been presented in the form of single received levels for particular source categories (e.g., impulse, continuous, or explosive) above which an exposed animal would be predicted to incur auditory injury or be behaviorally harassed. Current NMFS practice (in relation to the MMPA) regarding exposure of marine mammals to sound is that cetaceans and pinnipeds exposed to sound levels of 180 and 190 dB rms or above, respectively, are considered to have been taken by Level A (i.e., injurious) harassment, while behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 120 dB rms for continuous sound (such as will be produced by vibratory pile driving) and 160 dB rms for pulsed sound (produced by impact pile driving), but below injurious thresholds. NMFS uses these levels as guidelines to estimate when harassment may occur.

NMFS is in the process of revising these acoustic thresholds, with the first step being to identify new auditory injury criteria for all source types and new behavioral criteria for seismic activities (primarily airgun-type sources). For more information on that process, please visit *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

Distance to Sound Thresholds

Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. In order to estimate the distance at which sound produced by the specified activity would attenuate to relevant thresholds, one must, at minimum, be able to reasonably approximate source levels and transmission loss (TL), which is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. In general, the sound pressure level (SPL) at some distance away from the source (e.g., driven pile) is governed by a measured source level, minus the TL of the energy as it dissipates with distance.

The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, including source depth and frequency, receiver depth, water depth, bottom composition and topography, presence or absence of reflective or absorptive in-water structures, and oceanographic conditions such as temperature, current, and water chemistry. The general formula for

underwater TL neglects loss due to scattering and absorption, which is assumed to be zero here. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of 15 (4.5 dB reduction in sound level for each doubling of distance) is often used under intermediate conditions, and is assumed here.

Source level, or the intensity of pile driving sound, is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A number of studies, primarily on the west coast, have measured sound produced during underwater pile driving projects. However, these data are largely for impact driving of steel pipe piles and concrete piles as well as vibratory driving of steel pipe piles. We know of no existing measurements for the specific pile types planned for use at NSM (i.e., king piles, paired sheet piles, plastic pipe piles), although some data exist for single sheet piles. It was therefore necessary to extrapolate from available data to determine reasonable source levels for this project.

In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from pile driving at NSM, the Navy first compared linear lengths (in terms of radiative surface length) of the pile types proposed for use with those for which measurements of underwater SPLs exist. For example, the total linear length of a king pile (with width of 17.87 in and height of 41.47 in) is equivalent to the circumference (i.e., linear length) of a 24-in diameter pipe pile. Please see Table 6–2 of the Navy's application for more detail on these comparisons. We recognize that these pile types may produce sound differently, given different radiative geometries, and that there may be differences in the frequency spectrum produced, but believe this to be the best available method of determining proxy source levels. We considered existing measurements from similar physical environments (sandy sediments and water depths greater than 15 ft) for impact and vibratory driving of 24-in steel pipe piles and for steel sheet piles. These studies, largely conducted by the Washington State Department of Transportation and the California Department of Transportation, show values around 160 dB for vibratory driving of 24-in pipe piles and around 162 dB for vibratory driving of sheet piles, and around 185–195 dB for impact driving of pipe piles (all measured at 10 m). Please see Laughlin (2005); Oestman *et al.* (2009); and Illingworth and Rodkin, Inc. (2010) for more information. For vibratory driving, 163 dB (as the highest representative value; Oestman *et al.*, 2009) was selected as a proxy source value for both sheet piles and king piles. For impact driving of both sheet piles and king piles (should it be required), a proxy source value of 189 dB (Oestman *et al.*, 2009) was selected for use in acoustic modeling based on similarity to the physical environment at NSM and because of the measurement location in mid-water column. No measurements are known to be available for vibratory driving of plastic polymer piles, so timber piles were considered as likely to be the most similar pile material. Although timber piles are typically installed via impact drivers, Laughlin (2011) reported a mean source measurement (at 16 m) for vibratory removal of timber piles. This value (150 dB) was selected as a proxy source value on the basis of similarity of materials between timber and polymer. No impact driving of polymer piles will occur. Please see Tables 6–3 and 6–4 in the Navy's application. All calculated distances to and the total area encompassed by the marine mammal sound thresholds are provided in Table 1.

TABLE 1—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL SOUND THRESHOLDS DURING PILE INSTALLATION

Pile type	Method	Threshold	Distance (m)[1]	Area (sq. km)[2]
Steel (sheet and king piles)	Vibratory	Level A harassment (180 dB)	n/a	0
		Level B harassment (120 dB)	7,356	2.9
	Impact	Level A harassment (180 dB)	40	0.004
		Level B harassment (160 dB)	858	0.67
Polymeric (plastic fender piles)	Vibratory	Level A harassment (180 dB)	n/a	0
		Level B harassment (120 dB)	1,585	0.88

[1] SPLs used for calculations were: 204 dB for impact driving, 178 dB for vibratory driving steel piles, and 168 dB for vibratory driving plastic piles.

[2] Areas presented take into account attenuation and/or shadowing by land. Calculated distances to relevant thresholds cannot be reached in most directions form source piles. Please see Figures 6–1 through 6–3 in the Navy's application.

The Mayport turning basin does not represent open water, or free field, conditions. Therefore, sounds would attenuate as per the confines of the basin, and may only reach the full estimated distances to the harassment thresholds via the narrow, east-facing entrance channel. Distances shown in Table 1 are estimated for free-field conditions, but areas are calculated per the actual conditions of the action area. See Figures 6–1 through 6–3 of the Navy's application for a depiction of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

Description of Marine Mammals in the Area of the Specified Activity

There are four marine mammal species which may inhabit or transit through the waters nearby NSM at the mouth of the St. Johns River and in nearby nearshore Atlantic waters. These include the bottlenose dolphin, Atlantic spotted dolphin, North Atlantic right whale (*Eubalaena glacialis*), and humpback whale (*Megaptera novaeangliae*). Multiple additional cetacean species occur in South Atlantic waters but would not be expected to occur in shallow nearshore waters of the action area. The right and humpback whales are both listed under the Endangered Species Act (ESA) as endangered. Table 2 lists the marine mammal species with expected potential for occurrence in the vicinity of NSM during the project timeframe.

Multiple stocks of bottlenose dolphins may be present in the action area, either seasonally or year-round, and are described further below. We first address the two large whale species that may occur in the action area.

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NSM

Species	Stock abundance [1] (CV, N_{min})	Relative occurrence in action area	Season of occurrence
North Atlantic right whale Western North Atlantic stock	444 (n/a, 444)	Rare inshore, regular near/offshore.	November to April.
Humpback whale Gulf of Maine stock	823 (n/a, 823)	Rare	Fall–Spring.
Atlantic spotted dolphin Western North Atlantic stock	26,798 (0.66, 16,151)	Rare	Year-round.
Bottlenose dolphin Western North Atlantic offshore stock	81,588 (0.17, 70,775)	Rare	Year-round.
Bottlenose dolphin Western North Atlantic coastal, southern migratory stock.	12,482 (0.32, 9,591)	Possibly common (seasonal)	January to March.
Bottlenose dolphin Western North Atlantic coastal, northern Florida stock.	3,064 (0.24, 2,511)	Possibly common	Year-round.
Bottlenose dolphin Jacksonville Estuarine System stock	412 [2] (0.06, unknown)	Possibly common	Year-round.

[1] NMFS marine mammal stock assessment reports at: *http://www.nmfs.noaa.gov/pr/sars/species.htm.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[2] This abundance estimate is considered an overestimate because it includes non- and seasonally-resident animals.

Right whales occur in sub-polar to temperate waters in all major ocean basins in the world with a clear migratory pattern, occurring in high latitudes in summer (feeding) and lower latitudes in winter (breeding). North Atlantic right whales exhibit extensive migratory patterns, traveling along the eastern seaboard from calving grounds off Georgia and northern Florida to northern feeding areas off of the northeast U.S. and Canada in March/April and returning in November/December. Migrations are typically within 30 nmi of the coastline and in waters less than 160 ft deep. Although this migratory pattern is well-known, winter distribution for most of the population—the non-calving portion—is poorly known, as many whales are not observed on the calving grounds. It is unknown where these animals spend the winter, although they may occur further offshore or may remain on foraging grounds during winter (Morano *et al.*, 2012). During the winter calving period, right whales occur regularly in offshore waters of northeastern Florida. Critical habitat for right whales in the southeast (as identified under the ESA) is designated to protect calving grounds, and encompasses waters from the coast out to 15 nmi offshore from Mayport. More rarely, right whales have been observed entering the mouth of the St. Johns River for brief periods of time (Schweitzer and Zoodsma, 2011). Right whales are not present in the region outside of the winter calving season.

Humpback whales are a cosmopolitan species that migrate seasonally between warm-water (tropical or sub-tropical) breeding and calving areas in winter months and cool-water (temperate to sub-Arctic/Antarctic) feeding areas in summer months (Gendron and Urban, 1993). They tend to occupy shallow, coastal waters, although migrations are undertaken through deep, pelagic waters. In the North Atlantic, humpback whales are known to aggregate in six summer feeding areas representing relatively discrete subpopulations (Clapham and Mayo, 1987), which share common wintering grounds in the Caribbean (and to a lesser extent off of West Africa) (Winn *et al.*, 1975; Mattila *et al.*, 1994; Palsbøll *et al.*, 1997; Smith *et al.*, 1999; Stevick *et al.*, 2003; Cerchio *et al.*, 2010). These populations or aggregations range from the Gulf of Maine in the west to Norway in the east, and the migratory range includes the east coast of the U.S. and Canada. The only managed stock in U.S. waters is the Gulf of Maine feeding aggregation, although other stocks occur in Canadian waters (e.g., Gulf of St. Lawrence feeding aggregation), and it is possible that whales from other stocks could occur in U.S. waters. Significant numbers of whales do remain in mid- to high-latitude waters during the winter months (Clapham *et al.*, 1993; Swingle *et al.*, 1993), and there have been a number of humpback sightings in coastal waters of the southeastern U.S. during the winter (Wiley et al., 1995; Laerm *et al.*, 1997; Waring *et al.*, 2013). According to Waring *et al.* (2013), it is unclear whether the increased numbers of sightings represent a distributional change, or are simply due to an increase in sighting effort and/or whale abundance. These factors aside, the humpback whale remains relatively rare in U.S. coastal waters south of the mid-Atlantic region, and is considered rare to extralimital in the action area. Any occurrences in the region would be expected in fall, winter, and spring during migration, as whales are unlikely to occur so far south during the summer feeding season.

Neither the humpback whale nor the right whale would occur within the turning basin, and only the right whale has been observed to occur as far inshore as the mouth of the St. Johns River. Therefore, the only potential for interaction with these species is likely to be within the narrow sliver of ensonified area expected to extend eastward from the entrance channel during vibratory driving of steel piles (see Figure 6–1 of the application). As described above, humpback whales are considered rare in the region, and, when considering frequency of occurrence, size of ensonified area (approximately 2 km^2), and duration (45 days), we consider the possibility for harassment of humpback whales to be discountable. For right whales, due to the greater potential for interaction during the calving season we considered available density information, including abundance data from NMFS surveys, as analyzed by the Navy to produce density estimates (NODES dataset; DoN, 2007); Duke University habitat modeling (Read *et al.*, 2009); and global density estimates derived from relative environmental suitability modeling (Kaschner, 2004; Kaschner *et al.*, 2006), as presented in DoN (2012). All sources show low density estimates. The Navy used the Kaschner *et al.* (2006) modeling, as described in the Navy Marine Species Density Database (DoN, 2012), to produce a representative estimate for the specific action area. Density values for the inshore zone were uniform across seasons; seasonal distribution changes that may be expected for right whales are reflected further offshore from the Mayport turning basin. Use of this estimate (0.00005/km^2) resulted in zero estimated exposures of right whales to sound produced by project activities.

Only a small portion of the affected area (0.19 km²; less than 5 percent of total ZOI) falls in the offshore zone for which seasonal densities are available, and including that area with the highest yearly density (0.124/km²; Dec-Mar; NODES dataset) does not affect the zero-exposure prediction. Therefore, the humpback whale and right whale are excluded from further analysis and are not discussed further in this document.

The following summarizes the population status and abundance of the remaining species. We have reviewed the Navy's species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of the Navy's application, as well as to the Navy's Marine Resource Assessment for the Charleston/Jacksonville Operating Area (DoN, 2008; available at *https://portal.navfac.navy.mil/portal/page/portal/navfac/navfac_ww_pp/navfac_hq_pp/navfac_environmental/mra*), instead of reprinting the information here. The following information is summarized largely from NMFS Stock Assessment Reports (*http://www.nmfs.noaa.gov/pr/sars/*).

Bottlenose Dolphin

Bottlenose dolphins are found worldwide in tropical to temperate waters and can be found in all depths from estuarine inshore to deep offshore waters. Temperature appears to limit the range of the species, either directly, or indirectly, for example, through distribution of prey. Off North American coasts, common bottlenose dolphins are found where surface water temperatures range from about 10 °C to 32 °C. In many regions, including the southeastern U.S., separate coastal and offshore populations are known. There is significant genetic, morphological, and hematological differentiation evident between the two ecotypes (e.g., Walker, 1981; Duffield *et al.*, 1983; Duffield, 1987; Hoelzel *et al.*, 1998), which correspond to shallow, warm water and deep, cold water. Both ecotypes have been shown to inhabit the western North Atlantic (Hersh and Duffield, 1990; Mead and Potter, 1995), where the deep-water ecotype tends to be larger and darker. In addition, several lines of evidence, including photo-identification and genetic studies, support a distinction between dolphins inhabiting coastal waters near the shore and those present in the inshore waters of bays, sounds and estuaries. This complex differentiation of bottlenose dolphin populations is observed throughout the Atlantic and Gulf of Mexico coasts where bottlenose dolphins are found, although estuarine populations have not been fully defined.

In the Mayport area, four stocks of bottlenose dolphins are currently managed, none of which are protected under the ESA. Of the four stocks—offshore, southern migratory coastal, northern Florida coastal, and Jacksonville estuarine system—only the latter three are likely to occur in the action area. Bottlenose dolphins typically occur in groups of 2–15 individuals (Shane *et al.*, 1986; Kerr *et al.*, 2005). Although significantly larger groups have also been reported, smaller groups are typical of shallow, confined waters. In addition, such waters typically support some degree of regional site fidelity and limited movement patterns (Shane *et al.*, 1986; Wells *et al.*, 1987). Observations made during recent marine mammal surveys conducted in the Mayport turning basin show bottlenose dolphins typically occurring individually or in pairs, or less frequently in larger groups. The maximum observed group size during these surveys is six, while the mode is one. Navy observations indicate that bottlenose dolphins rarely linger in a particular area in the turning basin, but rather appear to move purposefully through the basin and then leave, which likely reflects a lack of any regular foraging opportunities or habitat characteristics of any importance in the basin. Based on currently available information, it is not possible to determine which stock dolphins occurring in the action area may belong to. These stocks are described in greater detail below.

Western North Atlantic Offshore—This stock, consisting of the deep-water ecotype or offshore form of bottlenose dolphin in the western North Atlantic, is distributed primarily along the outer continental shelf and continental slope, but has been documented to occur relatively close to shore (Waring *et al.*, 2009a). The separation between offshore and coastal morphotypes varies depending on location and season, with the ranges overlapping to some degree south of Cape Hatteras. Based on genetic analysis, Torres *et al.* (2003) found a distributional break at 34 km from shore, with the offshore form found exclusively seaward of 34 km and in waters deeper than 34 m. Within 7.5 km of shore, all animals were of the coastal morphotype. More recently, coastwide, systematic biopsy collection surveys were conducted during the summer and winter to evaluate the degree of spatial overlap between the two morphotypes. South of Cape Hatteras, spatial overlap was found although the probability of a sampled group being from the offshore morphotype increased with increasing depth, and the closest distance for offshore animals was 7.3 km from shore, in water depths of 13 m just south of Cape Lookout (Garrison *et al.*, 2003). The maximum radial distance for the largest ZOI is approximately 7.4 km (Table 1); therefore, while possible, it is unlikely that any individuals of the offshore morphotype would be affected by project activities. In terms of water depth, the affected area is generally in the range of the shallower depth reported for offshore dolphins by Garrison *et al.* (2003), but is far shallower than the depths reported by Torres *et al.* (2003). South of Cape Lookout, the zone of spatial overlap between offshore and coastal ecotypes is generally considered to occur in water depths between 20–100 m (Waring *et al.*, 2011), which is generally deeper than waters in the action area. This stock is thus excluded from further analysis.

Western North Atlantic Coastal, Southern Migratory—The coastal morphotype of bottlenose dolphin is continuously distributed from the Gulf of Mexico to the Atlantic and north approximately to Long Island (Waring *et al.*, 2011). On the Atlantic coast, Scott *et al.* (1988) hypothesized a single coastal stock, citing stranding patterns during a high mortality event in 1987–88 and observed density patterns. More recent studies demonstrate that there is instead a complex mosaic of stocks (Zolman, 2002; McLellan *et al.*, 2003; Rosel *et al.*, 2009). The coastal morphotype was managed by NMFS as a single stock until 2009, when it was split into five separate stocks, including northern and southern migratory stocks.

According to the Scott et al. (1988) hypothesis, a single stock was thought to migrate seasonally between New Jersey (summer) and central Florida (winter). Instead, it was determined that a mix of resident and migratory stocks exists, with the migratory movements and spatial distribution of the southern migratory stock the most poorly understood of these. Stable isotope analysis and telemetry studies provide evidence for seasonal movements of dolphins between North Carolina and northern Florida (Knoff, 2004; Waring *et al.*, 2011), and genetic analyses and tagging studies support differentiation of northern and southern migratory stocks (Rosel *et al.*, 2009; Waring *et al.*, 2011). Although there is significant uncertainty regarding the southern migratory stock's spatial movements, telemetry data indicates that the stock occupies waters of southern North Carolina (south of Cape Lookout) during the fall (October–December). In winter

months (January–March), the stock moves as far south as northern Florida where it overlaps spatially with the northern Florida coastal and Jacksonville estuarine system stocks. In spring (April–June), the stock returns north to waters of North Carolina, and is presumed to remain north of Cape Lookout during the summer months. Therefore, the potential exists for harassment of southern migratory dolphins, most likely during the winter only.

Bottlenose dolphins are ubiquitous in coastal waters from the mid-Atlantic through the Gulf of Mexico, and therefore interact with multiple coastal fisheries, including gillnet, trawl, and trap/pot fisheries. Stock-specific total fishery-related mortality and serious injury cannot be directly estimated because of the spatial overlap among stocks of bottlenose dolphins, as well as because of unobserved fisheries. The primary known source of fishery mortality for the southern migratory stock is the mid-Atlantic gillnet fishery, and the total estimated average annual fishery mortality (for all fisheries, based on data from 2004–08) for the stock ranges between a minimum of 24 and a maximum of 55 animals per year (Waring *et al.*, 2011). Between 2004 and 2008, 588 bottlenose dolphins stranded along the Atlantic coast between Florida and Maryland that could potentially be assigned to the southern migratory stock, although the assignment of animals to a particular stock is impossible in some seasons and regions due to spatial overlap amongst stocks (Waring *et al.*, 2011). Many of these animals exhibited some evidence of human interaction, such as line/net marks, gunshot wounds, or vessel strike. In addition, nearshore and estuarine habitats occupied by the coastal morphotype are adjacent to areas of high human population and some are highly industrialized. It should also be noted that stranding data underestimate the extent of fishery-related mortality and serious injury because not all of the marine mammals that die or are seriously injured in fishery interactions are discovered, reported or investigated, nor will all of those that are found necessarily show signs of entanglement or other fishery interaction. The level of technical expertise among stranding network personnel varies widely as does the ability to recognize signs of fishery interactions. Finally, multiple resident populations of bottlenose dolphins have been shown to have high concentrations of organic pollutants (e.g., Kuehl *et al.*, 1991) and, despite little study of contaminant loads in migrating coastal dolphins, exposure to environmental pollutants and subsequent effects on population health is an area of concern and active research.

The original, single stock of coastal dolphins recognized from 1995–2001 was listed as depleted under the MMPA as a result of a 1987–88 mortality event. That designation was retained when the single stock was split into multiple coastal stocks. Therefore, and as a result of the aforementioned factors, southern migratory dolphins are listed as depleted under the MMPA, and are also considered a strategic stock. The best abundance estimate for southern migratory dolphins is calculated from aerial surveys conducted in summer of 2002 (the least amount of stock overlap occurs during summer months). A more recent summer survey (2004) occurred during oceanographic conditions that resulted in significantly greater stock overlap. The resulting estimate of 12,842 (CV = 0.32) is used to calculate a minimum population estimate of 9,591 and potential biological removal (PBR) of 96 animals. Insufficient data exist to determine the population trends for this stock, and productivity rates are not known, although theoretical modeling shows that cetacean populations may not grow at rates much greater than 4 percent given the constraints of their reproductive life history (Barlow *et al.*, 1995).

Western North Atlantic Coastal, Northern Florida—Please see above for description of the differences between coastal and offshore ecotypes and the delineation of coastal dolphins into management stocks. The northern Florida coastal stock is one of five stocks of coastal dolphins and one of three known resident stocks (other resident stocks include South Carolina/Georgia and central Florida dolphins). The spatial extent of these stocks, their potential seasonal movements, and their relationships with estuarine stocks are poorly understood. During summer months, when the migratory stocks are known to be in North Carolina waters and further north, bottlenose dolphins are still seen in coastal waters of South Carolina, Georgia and Florida, indicating the presence of additional stocks of coastal animals. Speakman *et al.* (2006) documented dolphins in coastal waters off Charleston, South Carolina, that are not known resident members of the estuarine stock, and genetic analyses indicate significant differences between coastal dolphins from northern Florida, Georgia and central South Carolina (NMFS, 2001; Rosel *et al.*, 2009). The northern Florida stock is thought to be present from approximately the Georgia-Florida border south to 29.4°N.

The northern Florida coastal stock is susceptible to interactions with similar fisheries as those described above for the southern migratory stock, including gillnet, trawl, and trap/pot fisheries. No fisheries-related mortality attributable to this stock has been reported (according to 2004–08 data; Waring *et al.*, 2011); however, many of these fisheries are not observed or have limited observer coverage and bottlenose dolphins are known to interact with these types of gear. From 2004–08, 78 stranded dolphins were recovered in northern Florida waters, although it was not possible to determine whether there was evidence of human interaction for the majority of these (Waring *et al.*, 2011). The same concerns discussed above regarding underestimation of mortality hold for this stock and, as for southern migratory dolphins, pollutant loading is a concern.

The single stock of coastal bottlenose dolphins recognized by NMFS until 2001 was listed as depleted under the MMPA. All five stocks of coastal bottlenose dolphin that were subsequently recognized retain that designation, and are also therefore considered strategic stocks. The best abundance estimate, derived from aerial surveys conducted in summer months of 2002 and 2004, is 3,064 (CV = 0.24). The abundance estimates from these two surveys differed by nearly an order of magnitude, perhaps reflecting variability in spatial distribution for coastal dolphins. The resulting minimum population estimate is 2,511, and the PBR is 25 individuals. There are insufficient data to determine population trends or net productivity rates for this stock.

Jacksonville Estuarine System—Please see above for description of the differences between coastal and offshore ecotypes and the delineation of coastal dolphins into management stocks primarily inhabiting nearshore waters. The coastal morphotype of bottlenose dolphin is also resident to certain inshore estuarine waters (Caldwell, 2001; Gubbins, 2002; Zolman, 2002; Gubbins *et al.*, 2003). Multiple lines of evidence support demographic separation between coastal dolphins found in nearshore waters and those in estuarine waters, as well as between dolphins residing within estuaries along the Atlantic and Gulf coasts (e.g., Wells *et al.*, 1987; Scott *et al.*, 1990; Wells *et al.*, 1996; Cortese, 2000; Zolman, 2002; Speakman, *et al.* 2006; Stolen *et al.*, 2007; Balmer *et al.*, 2008; Mazzoil *et al.*, 2008). In particular, a study conducted near Jacksonville demonstrated

significant genetic differences between coastal and estuarine dolphins (Caldwell, 2001; Rosel *et al.*, 2009). Despite evidence for genetic differentiation between estuarine and nearshore populations, the degree of spatial overlap between these populations remains unclear. Photo-identification studies within estuaries demonstrate seasonal immigration and emigration and the presence of transient animals (e.g., Speakman *et al.*, 2006). In addition, the degree of movement of resident estuarine animals into coastal waters on seasonal or shorter time scales is poorly understood (Waring *et al.*, 2011).

The Jacksonville estuarine system (JES) stock has been defined as separate primarily by the results of photo-identification and genetic studies. The stock range is considered to be bounded in the north by the Georgia-Florida border at Cumberland Sound, extending south to approximately Jacksonville Beach, Florida. This encompasses an area defined during a photo-identification study of bottlenose dolphin residency patterns in the area (Caldwell, 2001), and the borders are subject to change upon further study of dolphin residency patterns in estuarine waters of southern Georgia and northern/central Florida. The habitat is comprised of several large brackish rivers, including the St. Johns River, as well as tidal marshes and shallow riverine systems. Three behaviorally different communities were identified during Caldwell's (2001) study: the estuarine waters north (Northern) and south (Southern) of the St. Johns River and the coastal area, all of which differed in density, habitat fidelity and social affiliation patterns. The coastal dolphins are believed to be members of a coastal stock, however (Waring *et al.*, 2009b). Although Northern and Southern members of the JES stock show strong site fidelity, members of both groups have been observed outside their preferred areas. Dolphins residing within estuaries south of Jacksonville Beach down to the northern boundary of the Indian River Lagoon Estuarine System (IRLES) stock are currently not included in any stock, as there are insufficient data to determine whether animals in this area exhibit affiliation to the JES stock, the IRLES stock, or are simply transient animals associated with coastal stocks. Further research is needed to establish affinities of dolphins in the area between the ranges, as currently understood, of the JES and IRLES stocks.

The JES stock is susceptible to similar fisheries interactions as those described above for coastal stocks, although only trap/pot fisheries are likely to occur in estuarine waters frequented by the stock. Only one dolphin carcass bearing evidence of fisheries interaction was recovered during 2003–07 in the JES area (Waring *et al.*, 2009b). An additional sixteen stranded dolphins were recovered during this time, but no determinations regarding human interactions could be made for the majority. The same concerns discussed above regarding underestimation of mortality hold for this stock and, as for stocks discussed above, pollutant loading is a concern. Although no contaminant analyses have yet been conducted in this area, the JES stock inhabits areas with significant drainage from industrial and urban sources, and as such is exposed to contaminants in runoff from these. In other estuarine areas where such analyses have been conducted, exposure to anthropogenic contaminants has been found to likely have an effect (Hansen *et al.* 2004; Schwacke *et al.*, 2004; Reif *et al.*, 2008).

The original, single stock of coastal dolphins recognized from 1995–2001 was listed as depleted under the MMPA as a result of a 1987–88 mortality event. That designation was retained when the single stock was split into multiple coastal stocks. However, Scott *et al.* (1988) suggested that dolphins residing in the bays, sounds and estuaries adjacent to these coastal waters were not affected by the mortality event and these animals were explicitly excluded from the depleted listing (Waring *et al.*, 2009b). Gubbins *et al.* (2003), using data from Caldwell (2001), estimated the stock size to be 412 (CV = 0.06). However, NMFS considers abundance unknown because this estimate likely includes an unknown number of non-resident and seasonally-resident dolphins. It nevertheless represents the best available information regarding stock size. The minimum population estimate and PBR are considered unknown, and there are insufficient data to determine population trends. Total human-caused mortality and serious injury for this stock is also unknown, but there are known to be significant interactions between estuarine bottlenose dolphins and crab pot fisheries in other areas (Burdett and McFee, 2004). Because the stock size is likely small, and relatively few mortalities and serious injuries would exceed PBR, the stock is considered to be a strategic stock (Waring *et al.*, 2009b).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are distributed in tropical and warm temperate waters of the western North Atlantic predominantly over the continental shelf and upper slope, from southern New England through the Gulf of Mexico (Leatherwood et al., 1976). Spotted dolphins in the Atlantic Ocean and Gulf of Mexico are managed as separate stocks. The Atlantic spotted dolphin occurs in two forms which may be distinct sub-species (Perrin *et al.*, 1987; Rice, 1998); a larger, more heavily spotted form inhabits the continental shelf inside or near the 200-m isobath and is the only form that would be expected to occur in the action area. Although typically observed in deeper waters, spotted dolphins of the western North Atlantic stock do occur regularly in nearshore waters south of the Chesapeake Bay (Mullin and Fulling, 2003). Specific data regarding seasonal occurrence in the region of activity is lacking, but higher numbers of individuals have been reported to occur in nearshore waters of the Gulf of Mexico from November to May, suggesting seasonal migration patterns (Griffin and Griffin, 2003).

Atlantic spotted dolphins are not protected under the ESA or listed as depleted under the MMPA. The best abundance estimate of the western North Atlantic stock of Atlantic spotted dolphins is 26,798 (CV = 0.66) and the minimum population size of this stock is 16,151 individuals (Waring *et al.*, 2013). This abundance estimate was generated from shipboard and aerial surveys conducted during June–August, 2011 (Palka, 2012), and only includes data from northern U.S. waters. The aerial portion covered 5,313 km of trackline over waters shallower than the 100-m depth contour, from north of New Jersey through the U.S. and Canadian Gulf of Maine and up to and including the lower Bay of Fundy. The shipboard portion covered 3,107 km of trackline in waters deeper than the 100-m depth contour out to and beyond the U.S. Exclusive Economic Zone. Additional survey effort was conducted in southern U.S. waters, from North Carolina to Florida, but data are currently being analyzed and are not included in this abundance estimate.

The resulting PBR is calculated at 162 individuals. Total annual estimated average fishery-related mortality or serious injury to this stock during 2006–10 was 0.2 animals. An additional 19 animals were stranded during this period, but only one showed evidence of human interaction (Waring *et al.*, 2013). These data likely underestimate the full extent of human-caused mortality. However, such mortality is nevertheless likely substantially less than the PBR; therefore, Atlantic spotted dolphins are not considered a strategic

stock under the MMPA. There are insufficient data to determine the population trends for this species because, prior to 1998, species of spotted dolphins were not differentiated during surveys (Waring *et al.*, 2013).

Potential Effects of the Specified Activity on Marine Mammals

We have determined that pile driving, as outlined in the project description, has the potential to result in behavioral harassment of marine mammals that may be present in the project vicinity while construction activity is being conducted. In theory, impact pile driving could result in injury of marine mammals although, for reasons described later in this document, we do not believe such an outcome to be likely or even possible in some cases. The full range of potential effects of sound on marine mammals, and pile driving in particular, are described in this section.

Marine Mammal Hearing

Effects on marine mammals anticipated from the specified activities would be expected to result primarily from exposure of animals to underwater sound. Hearing is the most important sensory modality for marine mammals, and exposure to sound can have deleterious effects. To appropriately assess these potential effects, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.*, 1995; Wartzok and Ketten, 1999). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on measured or estimated hearing ranges on the basis of available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall. The functional groups and the associated frequencies are indicated below (note that these frequency ranges do not necessarily correspond to the range of best hearing, which varies by species):

- Low-frequency cetaceans (mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 30 kHz (extended from 22 kHz on the basis of data indicating some mysticetes can hear above 22 kHz; Au *et al.*, 2006; Lucifredi and Stein, 2007; Ketten and Mountain, 2009; Tubelli *et al.*, 2012);
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus*): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in water: functional hearing is estimated to occur between approximately 75 Hz to 100 kHz for Phocidae (true seals) and between 100 Hz and 40 kHz for Otariidae (eared seals), with the greatest sensitivity between approximately 700 Hz and 20 kHz. The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Mulsow *et al.*, 2011).

Two cetacean species are expected to potentially be affected by the specified activity. The bottlenose and Atlantic spotted dolphins are classified as mid-frequency cetaceans (Southall *et al.*, 2007).

Underwater Sound Effects

Potential Effects of Pile Driving Sound—The effects of sounds from pile driving might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (e.g., sand) would absorb or attenuate the sound more readily than hard substrates (e.g., rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species may result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.*, 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals. Potential effects from impulsive sound sources can range in severity, ranging from effects such as behavioral disturbance, tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to mortality (Yelverton *et al.*, 1973).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.*, 2007). Marine mammals depend on acoustic cues for vital biological functions, (e.g., orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction. However, this depends on the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated sound exposure that leads to TTS could cause PTS. PTS, in the unlikely event that it occurred, would constitute injury, but TTS is not considered injury (Southall *et al.*, 2007). It is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment or any significant non-auditory physical or physiological effects for reasons discussed later in this document. Some behavioral disturbance is expected, but it is likely that this would be localized and short-term because of the short project duration.

Several aspects of the planned monitoring and mitigation measures for

this project (see the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections later in this document) are designed to detect marine mammals occurring near the pile driving to avoid exposing them to sound pulses that might, in theory, cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area where received levels of pile driving sound are high enough that hearing impairment could potentially occur. In those cases, the avoidance responses of the animals themselves would reduce or (most likely) avoid any possibility of hearing impairment. Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. It is especially unlikely that any effects of these types would occur during the present project given the brief duration of exposure for any given individual and the planned monitoring and mitigation measures. Perhaps most importantly, impact pile driving is planned only as a contingency for this project and it is possible that little to no impact pile driving would actually occur. The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa²-s (i.e., 186 dB sound exposure level [SEL] or approximately 221–226 dB pk-pk) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB re 1 μPa rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy. Levels greater than or equal to 190 dB re 1 μPa rms are expected to be restricted to radii no more than 5 m (16 ft) from the pile driving. For an odontocete closer to the surface, the maximum radius with greater than or equal to 190 dB re 1 μPa rms would be smaller.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin and beluga whale (*Delphinapterus leucas*). There is no published TTS information for other species of cetaceans. However, preliminary evidence from a harbor porpoise exposed to pulsed sound suggests that its TTS threshold may have been lower (Lucke *et al.*, 2009). To avoid the potential for injury, NMFS has determined that cetaceans should not be exposed to pulsed underwater sound at received levels exceeding 180 dB re 1 μPa rms. As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to pile driving pulses stronger than 180 dB re 1 μPa rms.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to pile driving activity might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to pile driving might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.*, 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa²-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Measured source levels from impact pile driving can be as high as 214 dB re 1 μPa at 1 m. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.*, 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.*, 2002). Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa²-s) in the aforementioned experiment (Finneran *et al.*, 2002). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity sound levels for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds that could cause TTS or the onset of PTS.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would

presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Behavioral responses to sound are highly variable and context-specific and reactions, if any, depend on species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day, and many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Thorson and Reyff, 2006; see also Gordon *et al.*, 2004; Wartzok *et al.*, 2003; Nowacek *et al.*, 2007). Responses to non-pulsed sources, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.*, 1995): changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (e.g., pinnipeds flushing into water from haul-outs or rookeries). Since pile driving would likely only occur for a few hours a day, over a short period of time, it is unlikely to result in permanent displacement. Any potential impacts from pile driving activities could be experienced by individual marine mammals, but would not be likely to cause population level impacts, or affect the long-term fitness of the species.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.*, 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, sound could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were man-made, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey sound. It may also affect communication signals when they occur near the sound band and thus reduce the communication space of animals (e.g., Clark *et al.*, 2009) and cause increased stress levels (e.g., Foote *et al.*, 2004; Holt *et al.*, 2009).

Masking has the potential to impact species at population, community, or even ecosystem levels, as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand, 2009). All anthropogenic sound sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient sound levels, thus intensifying masking. However, much of the sound from the proposed activities is confined in an

area of inland waters (the Mayport turning basin and mouth of the St. Johns River) that is bounded by landmass; therefore, the sound generated is not expected to contribute significantly to increased ocean ambient sound.

The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area. Impact pile driving activity is relatively short-term, with rapid pulses occurring for the duration of the driving event. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is likely to be discountable. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for the duration of the driving event, which is likely to be short for this project. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Anticipated Effects on Habitat

The proposed activities at NSM would not result in permanent impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and may affect acoustic habitat (see masking discussion above). There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (i.e., fish) near NSM and minor impacts to the immediate substrate during installation and removal of piles during the wharf construction project.

Pile Driving Effects on Potential Prey (Fish)

Construction activities may produce both pulsed (i.e., impact pile driving) and continuous (i.e., vibratory pile driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005,.2009) and Hastin identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving (or other types of sounds) on fish, although several are based on studies in support of large, multiyear bridge construction projects (e.g., Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB re 1 µPa may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.*, 1992; Skalski *et al.*, 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Pile Driving Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in nearshore and estuarine waters in the region. Avoidance by potential prey (i.e., fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

Given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Therefore, pile driving is not likely to have a permanent, adverse effect on marine mammal foraging habitat at the project area. The Mayport turning basin itself is a man-made basin with significant levels of industrial activity and regular dredging, and is unlikely to harbor significant amounts of forage fish.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, we must set forth 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 on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Measurements from proxy pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOIs; see "Estimated Take by Incidental Harassment"); these values were used to develop mitigation measures for pile driving activities at NSM. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, the Navy would conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Monitoring and Shutdown for Pile Driving

The following measures would apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving and removal activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the 180 dB rms acoustic injury criteria. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury, serious injury, or death of marine mammals. Radial distances for

shutdown zones are shown in Table 1. However, for this project, a minimum shutdown zone of 15 m will be established during all pile driving activities, regardless of the estimated zone. Vibratory pile driving activities are not predicted to produce sound exceeding the Level A standard, but these precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to further reduce any possibility of acoustic injury. For impact driving of steel piles, the radial distance of the shutdown would be established at 40 m (Table 1).

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for pulsed and non-pulsed sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (i.e., shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see "Proposed Monitoring and Reporting"). Nominal radial distances for disturbance zones are shown in Table 1. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (e.g., what may be reasonably observed by visual observers stationed within the turning basin) would be observed.

In order to document observed incidences of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. If acoustic monitoring is being conducted for that pile, a received SPL may be estimated, or the received level may be estimated on the basis of past or subsequent acoustic monitoring. It may then be determined whether the animal was exposed to sound levels constituting incidental harassment in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. Therefore, although the predicted distances to behavioral harassment thresholds are useful for estimating incidental harassment for purposes of authorizing levels of incidental take, actual take may be determined in part through the use of empirical data. That information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving activities. In addition, observers shall record all incidences of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Please see the Monitoring Plan (available at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), developed by the Navy in agreement with NMFS, for full details of the monitoring protocols. Monitoring will take place from 15 minutes prior to initiation through 15 minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science, wildlife management, mammalogy, or related fields (bachelor's degree or higher is required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for 15 minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (i.e., when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Soft Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a 30-second waiting period. This procedure is repeated two additional times. However, implementation of soft start for vibratory pile driving during previous

pile driving work conducted by the Navy at another location has led to equipment failure and serious human safety concerns. Therefore, vibratory soft start is not proposed as a mitigation measure for this project, as we have determined it not to be practicable. We have further determined this measure unnecessary to providing the means of effecting the least practicable impact on marine mammals and their habitat. Prior to issuing any further IHAs to the Navy for pile driving activities in 2014 and beyond, we plan to facilitate consultation between the Navy and other practitioners (e.g., Washington State Department of Transportation and/or the California Department of Transportation) in order to determine whether the potentially significant human safety issue is inherent to implementation of the measure or is due to operator error. For impact driving, soft start will be required, and contractors will provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 30-second waiting period, then two subsequent three-strike sets.

We have carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that we prescribe 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: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as any other potential measures that may be relevant to the specified activity, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that we must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. The Navy's proposed monitoring and reporting is also described in their Marine Mammal Monitoring Plan.

Acoustic Monitoring

The Navy has proposed a sound source level verification study during the specified activities. Data would be collected in order to estimate airborne and underwater source levels. Monitoring would include two underwater positions and one airborne monitoring position. These exact positions would be determined in the field during consultation with Navy personnel, subject to constraints related to logistics and security requirements. Underwater sound monitoring would include the measurement of peak and rms sound pressure levels during pile driving activities at Wharf C–2. Typical ambient levels would be measured during lulls in the pile installation and reported in terms of rms sound pressure levels. Frequency spectra would be provided for pile driving sounds.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Navy would implement the following procedures for pile driving:

- MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (e.g., percent cover, visibility);
- Water conditions (e.g., sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report would be submitted to NMFS within 90 days of the completion of marine mammal monitoring. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any adverse responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results

of those actions and a refined take estimate based on the number of marine mammals observed during the course of construction. A final report would be prepared and submitted within 30 days following resolution of comments on the draft report. A technical report summarizing the acoustic monitoring data collected would be prepared within 75 days of completion of monitoring.

Estimated Take by Incidental Harassment

With respect to the activities described 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]." All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury, or mortality is considered discountable. However, it is unlikely that injurious or lethal takes would occur even in the absence of the proposed mitigation and monitoring measures.

If a marine mammal responds to a stimulus by changing its behavior (e.g., through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. This practice potentially overestimates the numbers of marine mammals taken. In addition, it is often difficult to distinguish between the individuals harassed and incidences of harassment. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (e.g., because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The turning basin is not important habitat for marine mammals, as it is a man-made, semi-enclosed basin with frequent industrial activity and regular maintenance dredging. The small area of ensonification extending out of the turning basin into nearshore waters is also not believed to be of any particular importance, nor is it considered an area frequented by marine mammals. Bottlenose dolphins may be observed at any time of year in estuarine and nearshore waters of the action area, but sightings of other species are rare. Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. The Navy has requested authorization for the incidental taking of small numbers of bottlenose dolphins and Atlantic spotted dolphins in the Mayport turning basin and associated nearshore waters that may be ensonified by project activities.

Marine Mammal Densities

For all species, the best scientific information available was used to derive density estimates and the maximum appropriate density value for each species was used in the marine mammal take assessment calculation. Density values for the Atlantic spotted dolphin were derived from global density estimates produced by Sea Mammal Research Unit, Ltd. (SMRU), as presented in DoN (2012), and the highest seasonal density (spring; 0.6803/km²) was used for take estimation. Density for bottlenose dolphin is derived from site-specific surveys conducted by the Navy. Only bottlenose dolphins have been observed in the turning basin; it is not currently possible to identify observed individuals to stock. This survey effort consists of twelve half-day observation periods covering mornings and afternoons during December 10–13, 2012, and March 4–7, 2013. During each observation period, two observers (one at ground level and one positioned at a fourth-floor observation point) monitored for the presence of marine mammals in the turning basin (0.712 km²) and tracked their movements and behavior while inside the basin, with observations recorded for five-minute intervals every half-hour. Morning sessions typically ran from 7:00–11:30 and afternoon sessions from 1:00 to 5:30. Most observations were of individuals or pairs (mode of 1) although a maximum group size of six was observed. It was assumed that the average observed group size (1.8) could occur in the action area each day, and was thus used to calculate a density of 2.53/km². For comparison, the maximum density value available from the NMSDD for bottlenose dolphins in inshore areas is significantly lower (winter, 0.217/km², SMRU estimate) and would likely underestimate the occurrence of bottlenose dolphins in the turning basin.

Description of Take Calculation

The take calculations presented here rely on the best data currently available for marine mammal populations in the vicinity of Mayport. The following assumptions are made when estimating potential incidences of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period; and,
- There will be 50 total days of vibratory driving (45 days for steel piles and 5 days for plastic piles) and 20 days of impact pile driving.
- Exposures to sound levels above the relevant thresholds equate to take, as defined by the MMPA.

The calculation for marine mammal takes is estimated by:

Exposure estimate = (n * ZOI) * days of total activity

Where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI impact area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure, and is rounded to the nearest whole number before multiplying by days of total activity.

The ZOI impact area is the estimated range of impact to the sound criteria. The distances specified in Table 1 were used to calculate ZOIs around each pile. The ZOI impact area calculations took into consideration the possible affected area with attenuation due to the constraints of the basin. Because the basin restricts sound from propagating outward, with the exception of the east-

facing entrance channel, the radial distances to thresholds are not generally reached.

While pile driving can occur any day, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The exposure assessment methodology is an estimate of the numbers of individuals exposed to the effects of pile driving activities exceeding NMFS-established thresholds. Of note in these exposure estimates, mitigation methods (i.e., visual monitoring and the use of shutdown zones; soft start for impact pile driving) were not quantified within the assessment and successful implementation of mitigation is not reflected in exposure estimates. In addition, equating exposure with response (i.e., a behavioral response meeting the definition of take under the MMPA) is simplistic and conservative assumption. For these reasons, results from this acoustic exposure assessment likely overestimate take estimates to some degree.

TABLE 3—NUMBER OF POTENTIAL INCIDENTAL TAKES OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES

Species	Activity	Estimated incidences of take [1]		Total
		Level A	Level B	
Bottlenose dolphin [2]	Impact driving (steel piles)	0	40	365
	Vibratory driving (steel piles)	0	315	
	Vibratory driving (plastic piles)	0	10	
Atlantic spotted dolphin	Impact driving (steel piles)	0	0	95
	Vibratory driving (steel piles)	0	90	
	Vibratory driving (plastic piles)	0	5	

[1] Acoustic injury threshold is 180 dB for cetaceans; behavioral harassment threshold applicable to impact pile driving is 160 dB and to vibratory driving is 120 dB.

[2] It is impossible to estimate from available information which stock these takes may accrue to.

Only bottlenose dolphins are likely to occur inside the turning basin; therefore, the estimates for spotted dolphin are likely overestimates because the ZOI areas include the turning basin. Bottlenose dolphins are likely to be exposed to sound levels that could cause behavioral harassment if they enter the turning basin while pile driving activity is occurring. Outside the turning basin, potential takes could occur if individuals of these species move through the ensonified area when pile driving is occurring. It is not possible to determine, from available information, how many of the estimated incidences of take for bottlenose dolphins may accrue to the different stocks that may occur in the action area. Similarly, animals observed in the ensonified areas will not be able to be identified to stock on the basis of visual observation.

Negligible Impact and Small Numbers Analyses and Preliminary 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, we considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

Small Numbers Analysis

The number of incidences of take authorized for Atlantic spotted dolphins is small relative to the relevant stock—less than one percent. As described previously, of the 365 incidences of behavioral harassment predicted to occur for bottlenose dolphin, we have no information allowing us to parse those predicted incidences amongst the three stocks of bottlenose dolphin that may occur in the ensonified area. Therefore, we assessed the total number of predicted incidences of take against the best abundance estimate for each stock, as though the total would occur for the stock in question. For two of the bottlenose dolphin stocks, the total predicted number of incidences of take authorized would be considered small—less than three percent for the southern migratory stock and less than twelve percent for the northern Florida coastal stock—even if each estimated taking occurred to a new individual. This is an extremely unlikely scenario as, for bottlenose dolphins in estuarine and nearshore waters, there is likely to be some overlap in individuals present day-to-day.

The total number of authorized takes proposed for bottlenose dolphins, if assumed to accrue solely to new individuals of the JES stock, is higher relative to the total stock abundance, which is currently considered unknown. However, these numbers represent the estimated incidences of take, not the number of individuals taken. That is, it is highly likely that a relatively small subset of JES bottlenose dolphins would be harassed by project activities. JES bottlenose dolphins range from Cumberland Sound at the Georgia-Florida border south to approximately Palm Coast, Florida, an area spanning over 120 linear km of coastline and including habitat consisting of complex inshore and estuarine waterways. JES dolphins, divided by Caldwell (2001) into Northern and Southern groups, show strong site fidelity and, although members of both groups have been observed outside their preferred areas, it is likely that the majority of JES dolphins would not occur within waters ensonified by project activities. Further, although the largest area of ensonification is predicted to extend up to 7.5 km offshore from NSM, estuarine dolphins are generally considered as restricted to inshore waters and only 1–2 km offshore. In summary, JES dolphins are (1) Known to form two groups and exhibit strong site fidelity (i.e., individuals do not generally range throughout the recognized overall JES stock range); (2) would not occur at all in a significant portion of the larger ZOI extending offshore from NSM; and (3) the specified activity will be stationary within an enclosed basin not recognized as an area of any special significance that would serve to attract or aggregate dolphins. We therefore believe that the estimated numbers of takes, were they to occur, likely represent repeated exposures of a much smaller number of bottlenose dolphins and that these

estimated incidences of take represent small numbers of bottlenose dolphins.

Negligible Impact Analysis

Pile driving activities associated with the Navy's wharf project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the likely methods of installation and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation, and this activity does not have significant potential to cause injury to marine mammals due to the relatively low source levels produced (less than 180 dB) and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient "notice" through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious. Environmental conditions in the confined and protected Mayport turning basin mean that marine mammal detection ability by trained observers is high, enabling a high rate of success in implementation of shutdowns to avoid injury, serious injury, or mortality.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to numerous other construction activities conducted in San Francisco Bay and in the Puget Sound region, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for bottlenose dolphins, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the turning basin while the activity is occurring.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidences of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any significant habitat within the project area, including known areas or features of special significance for foraging or reproduction; (4) the presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, none of these stocks are listed under the ESA, although coastal bottlenose dolphins are considered depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Preliminary Determinations

The number of marine mammals actually incidentally harassed by the project will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity. However, we find that the number of potential takings authorized (by level B harassment only), which we consider to be a conservative, maximum estimate, is small relative to the relevant regional stock or population numbers, and that the effect of the activity will be mitigated to the level of least practicable impact through implementation of the mitigation and monitoring measures described previously. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, we preliminarily find that the total taking from the activity will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

There are no ESA-listed marine mammals expected to occur in the action area. Therefore, the Navy has not requested authorization of the incidental take of ESA-listed species and no such authorization is proposed for issuance; therefore, no consultation under the ESA is required.

National Environmental Policy Act (NEPA)

The Navy has prepared a Draft Environmental Assessment (EA; *Wharf C–2 Recapitalization at Naval Station Mayport, FL*) in accordance with NEPA and the regulations published by the Council on Environmental Quality. We have posted it on the NMFS Web site (see **SUPPLEMENTARY INFORMATION**) concurrently with the publication of this proposed IHA. NMFS will independently evaluate the EA and determine whether or not to adopt it. We may prepare a separate NEPA analysis and incorporate relevant portions of the Navy's EA by reference. Information in the Navy's application, EA, and this notice collectively provide the environmental information related to proposed issuance of the IHA for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a final decision on the IHA request.

Proposed Authorization

As a result of these preliminary determinations, we propose to authorize the take of marine mammals incidental to the Navy's wharf project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 19, 2013.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–20507 Filed 8–21–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Term Extension.

Form Number(s): None.

Agency Approval Number: 0651–0020.

Type of Request: Revision of a currently approved collection.

Burden: 7,252 hours annually.

Number of Respondents: 1,950 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public from 1 to 25 hours, depending on the complexity and type of filing, to gather the necessary information, prepare the appropriate documents, and submit the information to the USPTO.

Needs and Uses: The patent term restoration portion of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417), which is codified at 35 U.S.C. 156, permits the United States Patent and Trademark Office (USPTO) to extend the term of protection under a patent to compensate for delay during regulatory review and approval by the Food and Drug Administration (FDA) or Department of Agriculture. Only patents for drug products, medical devices, food additives, or color additives are potentially eligible for extension. The maximum length that a patent may be extended under 35 U.S.C. 156 is five years. The USPTO administers 35 U.S.C. 156 through 37 CFR 1.710–1.791.

Separate from the extension provisions of 35 U.S.C. 156, the USPTO may in some cases extend the term of an original patent due to certain delays in the prosecution of the patent application, including delays caused by interference proceedings, secrecy orders, or appellate review by the Patent Trial and Appeal Board or a Federal court in which the patent is issued pursuant to a decision reversing an adverse determination of patentability. The patent term provisions of 35 U.S.C. 154(b), as amended by Title IV, Subtitle D of the Intellectual Property and Communications Omnibus Reform Act of 1999, require the USPTO to notify the applicant of the patent term adjustment in the notice of allowance and give the applicant an opportunity to request reconsideration of the USPTO's patent term adjustment determination. The USPTO administers 35 U.S.C. 154 through 37 CFR 1.701–1.705.

The public uses this information collection to file requests related to patent term extensions and reconsideration or reinstatement of patent term adjustments. The information in this collection is used by the USPTO to consider whether an applicant is eligible for a patent term extension or reconsideration of a patent term adjustment and, if so, to determine the length of the patent term extension or adjustment.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *www.reginfo.gov.*

Paper copies can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include "0651–0020 copy request" in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before September 23, 2013 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov*, or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: August 19, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–20466 Filed 8–21–13; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Quantitative Messaging Research

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is announcing an opportunity for public comment on a proposed collection of information by the agency. Under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. The CFTC's Office of Consumer Outreach ("OCO") develops campaigns to change consumer behaviors so that consumers can better avoid fraud as defined under the Commodities Exchange Act. The CFTC is posing survey questions to the public. This survey will include screening questions to identify the correct respondents and questions to determine optimal messages to help consumers identify, avoid, and report financial fraud as part of a consumer-facing anti-fraud campaign. This survey will follow qualitative message testing research (for which CFTC received fast-track OMB approval) and is necessary to identify, with statistical validation, which of these messages most effectively help consumers to identify, avoid, and report financial fraud.

DATES: Comments must be received on or before October 21, 2013.

ADDRESSES: You may submit comments, regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, by any of the following methods:

Agency Web site, via its Comments Online process: http://comments.cftc.gov. Follow the instructions for submitting comments through the Web site.

Mail: Send to Melissa D. Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

Hand delivery/Courier: Same as Mail above.

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

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an

English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Nisha Smalls, Consumer Education & Outreach Specialist, 202–418–5000, *consumers@cftc.gov*, Office of Consumer Outreach, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Under the PRA, federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they collect or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) as "the obtaining, causing to be obtained, soliciting . . . facts or opinions by or for an agency, regardless of form or format [from] ten or more persons." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires federal agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. Under OMB regulations, which implement provisions of the PRA, certain "facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications," 5 CFR 1320.3(h)(4), or "facts or opinions obtained or solicited at or in connection with public hearings or meetings," 5 CFR 1320.3(h)(8), are excluded from the OMB approval process.

In 2010, the Dodd-Frank Act[2] expanded the Commission's authority to, among other matters related to regulatory oversight, establish funding of consumer education initiatives under its new Whistleblower authority.[3] Under this new authority, the Commission established an Office of Consumer Outreach ("OCO") to, among other efforts, survey the public regarding consumer education initiatives.[4] This notice announces a public survey. The survey will include screening questions to identify the correct respondents and questions to determine optimal messages to help consumers identify, avoid, and report financial fraud as part of a consumer-facing anti-fraud campaign. This survey will follow qualitative message testing research (for which CFTC received fast-track OMB approval) and is necessary to identify, with statistical validation, which of these messages most effectively help consumers to identify, avoid, and report financial fraud.

The OCO will use the information collected in the survey to develop effective methods to inform the public on how best to detect and report financial fraud. This will be done by creating a final summary report that combines key findings from both the survey as well as other qualitative research.

Findings from the summary report will be used to inform a directional document to be used by the OCO that will include recommendations on primary messages, support points, content, overall tone, phrasing and imagery of outreach efforts on financial fraud, as well as how to use these messages in various communications channels (e.g. online, print, radio, TV and collateral materials).

The survey will be administered using an online survey tool. The online modality approach will allow presentation of test material to participants in a more convenient and time-efficient manner than other collection methods such as mall intercepts. The online method also allows for a quicker turnaround for data collection. No other collection methods will be used.

The screening questions will take about 1 minute to complete. It is anticipated that 2,200 people will be screened. The survey will take 15 minutes. 1,100 people will take the 15 minute survey. Based on these assumptions, the total burden hours will be 330 hours. This estimate includes the time to prepare the survey and transmit it to the Commission. The Commission estimates the average burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN HOURS

	Annual	Frequency	Hours per	Total	
17 CFR Part 165	2,200	1 response per respondent.	1 minute per response.	2,200	36.7 hours—$96.36 per burden hour.
17 CFR Part 165	1,100	1 response per respondent.	15 minutes per response.	1,100	293.3 hours—$96.36 per burden hour.

Issued in Washington, DC, on August 16, 2013, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission.

[FR Doc. 2013–20419 Filed 8–21–13; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law. 111–203,124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm.*

[3] *See* 7 U.S.C. 26.

[4] *See* 17 CFR 165.12.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0068]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 23, 2013.

Title, Associated Form and OMB Number: Request for Armed Forces Participation in Public Events; DD Form 2536, DD Form 2535; OMB Control Number 0704–0290.

Type of Request: Extension

Number of Respondents: 51,000

Responses per Respondent: 1

Annual Responses: 51,000

Average Burden per Response: 21 minutes

Annual Burden Hours: 17,850

Needs and Uses: This information collection requirement is necessary to evaluate the eligibility of events to receive Armed Forces community relations support and to determine whether requested military assets are available.

Affected Public: Business or other for-profit; individuals or households; State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: August 19, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20508 Filed 8–21–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0083]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 23, 2013.

Title, Associated Form and OMB Number: Representations to Implement Appropriation Act Provisions on Felony Convictions and Unpaid Federal Tax Liabilities, OMB Control Number 0704–0494.

Type of Request: Extension.

Number of Respondents: 2,500.

Responses per Respondent: 6.

Annual Responses: 15,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 1,250.

Needs and Uses: The information collection will enable DoD awarding officials to exercise due diligence and continue to comply with provisions of three Fiscal Year (FY) 2012 appropriations acts that make funds available to DoD Components for obligation, as well as similar provisions that future years' appropriations acts may include. The details of the provisions in the three FY 2012 acts vary somewhat but they generally require DoD to consider suspension or debarment before using appropriated funding to enter into a grant or cooperative agreement with a corporation if the awarding official is aware that the corporation has an unpaid federal tax liability or was convicted of a felony criminal violation within the preceding 24 months. The FY 2012 provisions are in:

- Sections 8124 and 8125 of the Department of Defense Appropriations Act, 2012 (Division A of Pub. L. 112–74, the Consolidated Appropriations Act, 2012);
- Section 514 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2012 (Division H of Pub. L. 112–74); and
- Sections 504 and 505 of the Energy and Water Development Appropriations Act, 2012 (Division B of Pub. L. 112–74).

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra. at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: August 19, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20472 Filed 8–21–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0108]

Agency Information Collection Activities; Comment Request; Federal Direct Stafford/Ford Loan and Federal Direct Subsidized/Unsubsidized Stafford/Ford Loan Master Promissory Note

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 21, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0108 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 2E103 Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Direct Stafford/Ford Loan and Federal Direct Subsidized/Unsubsidized Stafford/Ford Loan Master Promissory Note.

OMB Control Number: 1845–0007.

Type of Review: Revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 5,207,137.

Total Estimated Number of Annual Burden Hours: 2,603,569.

Abstract: The Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) and Federal Direct Unsubsidized Stafford/Ford Loan (Direct Unsubsidized Loan) Master Promissory Note (MPN) serves as the means by which an individual agrees to repay a Direct Subsidized Loan and/or Direct Unsubsidized Loan. An MPN is a promissory note under which a borrower may receive loans for a single or multiple academic years. This revision incorporates changes to information based on statutory and regulatory changes as well as expanding repayment plan information, deleting outdated information and clarifying information through updated charts and language.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–20474 Filed 8–21–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0109]

Agency Information Collection Activities; Comment Request; William D. Ford Federal Direct Loan (Direct Loan) Program Federal Direct PLUS Loan Master Promissory Note and Endorser Addendum

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 21, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0109 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan (Direct Loan) Program Federal Direct PLUS Loan

Master Promissory Note and Endorser Addendum.

OMB Control Number: 1845–0068.

Type of Review: Revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 1,087,407.

Total Estimated Number of Annual Burden Hours: 543,704.

Abstract: The Federal Direct PLUS Loan Master Promissory Note (Direct PLUS Loan MPN) serves as the means by which an individual applies for and agrees to repay a Federal Direct PLUS Loan. The Direct PLUS Loan MPN also informs the borrower of the terms and conditions of Direct PLUS Loan and includes a statement of borrower's rights and responsibilities. A Direct PLUS Loan borrower must not have an adverse credit history. If an applicant for a Direct PLUS Loan is determined to have an adverse credit history, the applicant may qualify for a Direct PLUS Loan by obtaining an endorser who does not have an adverse credit history. The Endorser Addendum serves as the means by which an endorser agrees to repay the Direct PLUS Loan if the borrower does not repay it. This revision incorporates changes to information based on statutory and regulatory changes as well as expanding repayment plan information, deleting outdated information and clarifying information through updated charts and language.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–20475 Filed 8–21–13; 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 (hereinafter "the Act"). The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy.

DATES: This subsequent arrangement will take effect no sooner than September 6, 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 700,888 g of U.S.-origin natural uranium oxide material, containing 5,005 g of the isotope U–235 (0.71% enrichment) and 18,699,112 g of U.S.-origin enriched uranium oxide material, containing 654,386 g of the isotope U–235 (less than five percent enrichment) in the form of uranium fuel fabrication scrap from Nuclear Fuel Industries, Ltd. in Minato-Ku, Tokyo, Japan, to Ulba Metallurgical Plant Joint Stock Company in Ust-Kamenogorsk, Kazakhstan. The material, which is currently located at Nuclear Fuels Industries, Ltd. in Japan, will be transferred to Ulba Metallurgical Plant for the purpose of recovering uranium from fuel fabrication scrap where it will be fabricated into fuel pellets to be used by six electric utilities (Tohoku Electric Power Co., Inc., The Tokyo Electric Power Co., Inc., Chubu Electric Power Co., Inc., Hokuriku Electric Power Company, The Chugoku Electric Power Co., Inc., and the Japan Atomic Power Company). The material was originally obtained by Nuclear Fuel Industries, Ltd. from nuclear fuel manufacturers in the United States pursuant to several Nuclear Regulatory Commission licenses.

In accordance with section 131a. of the Act, 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.

Dated: August 9, 2013.

For the Department of Energy.

Anne M. Harrington,

Deputy Administrator, Defense Nuclear Nonproliferation.

[FR Doc. 2013–20492 Filed 8–21–13; 8:45 am]

BILLING CODE 6450–01–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 (hereinafter "the Act"). 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 Between the Government of the United States of America and the Government of Japan Concerning Peaceful Uses of Nuclear Energy.

DATES: This subsequent arrangement will take effect no sooner than September 6, 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 10,227 kg of U.S.-origin natural uranium dioxide, 9,000 kg of which is uranium, from Cameco Corporation (Cameco) in Port Hope, Ontario, Canada, to Global Nuclear Fuel-Japan Co., Ltd. in Kanagawa-ken, Japan. The material, which is currently located at Cameco, will be fabricated into fuel pellets and used by Electric Power Development Co. Ltd. located in Tokyo. The material was originally obtained by Cameco from Denison Mines pursuant to export license XSOU8798.

In accordance with section 131a. of the Act, 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.

Dated: August 9, 2013.

For the Department of Energy.

Anne M. Harrington,

Deputy Administrator, Defense Nuclear Nonproliferation.

[FR Doc. 2013–20490 Filed 8–21–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 19, 2013, from 3:30 p.m. to 4:00 p.m. (EDT). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer (DFO) at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Gil Sperling, STEAB Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number is (202) 287–1644.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Receive an update on the activities of the STEAB's Taskforces and discuss the formation of new Task Forces to assist EERE with the Clean Energy Manufacturing Initiative and other proposed programs, provide an update to the Board on routine business matters and EERE areas of interest, and work on agenda items and details for the October 2013 meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gil Sperling at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site at: *www.steab.org.*

Issued at Washington, DC, on August 16, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–20503 Filed 8–21–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4338–002.
Applicants: New York Independent System Operator, Inc.
Description: NYISO Compliance re: Order No. 745—Demand Response to be effective 12/31/9998.
Filed Date: 8/14/13.
Accession Number: 20130814–5137.
Comments Due: 5 p.m. ET 9/4/13.

Docket Numbers: ER13–1988–002.
Applicants: Eligo Energy NY, LLC.
Description: Amendment to Application for Market Based Rate to be effective 7/18/2013.
Filed Date: 8/14/13.
Accession Number: 20130814–5131.
Comments Due: 5 p.m. ET 9/4/13.

Docket Numbers: ER13–2157–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 08–14–2013 SA 2289 Ameren-HoopestonWind GIA H094 to be effective 8/15/2013.
Filed Date: 8/14/13.
Accession Number: 20130814–5094.
Comments Due: 5 p.m. ET 9/4/13.

Docket Numbers: ER13–2158–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of PJM Service Agreement No. 3441 to be effective 3/14/2013.
Filed Date: 8/14/13.
Accession Number: 20130814–5133.
Comments Due: 5 p.m. ET 9/4/13.

Docket Numbers: ER13–2159–000.
Applicants: Southern California Edison Company.
Description: Amendment to Tie-Line Agreement with Brea Power II LLC to be effective 8/16/2013.
Filed Date: 8/15/13.
Accession Number: 20130815–5001.
Comments Due: 5 p.m. ET 9/5/13.

Docket Numbers: ER13–2160–000.
Applicants: Southern California Edison Company.
Description: Notice of Cancellation of SGIA & DSA with Aikyum Inc. to be effective 4/29/2013.
Filed Date: 8/15/13.
Accession Number: 20130815–5002.
Comments Due: 5 p.m. ET 9/5/13.

Docket Numbers: ER13–2161–000.
Applicants: ISO New England Inc.
Description: Attachment A–1 to be effective 6/15/2013.
Filed Date: 8/15/13.
Accession Number: 20130815–5014.
Comments Due: 5 p.m. ET 9/5/13.

Docket Numbers: ER13–2162–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 08–15–13 ORCA RS 35 to be effective 8/16/2013.
Filed Date: 8/15/13.
Accession Number: 20130815–5057.
Comments Due: 5 p.m. ET 9/5/13.

Docket Numbers: ER13–2163–000.
Applicants: BP West Coast Products LLC.
Description: BP West Coast Products LLC submits tariff filing per 35.15: Notice of Cancellation to be effective 8/16/2013.
Filed Date: 8/15/13.
Accession Number: 20130815–5106.
Comments Due: 5 p.m. ET 9/5/13.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM13–4–000.
Applicants: City of Burlington, Vermont.
Description: Application for Relief from Obligation to Purchase Output of the Chace Mill Hydroelectric Project of the City of Burlington, Vermont.
Filed Date: 8/15/13.
Accession Number: 20130815–5117.
Comments Due: 5 p.m. ET 9/12/13.

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: August 15, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–20467 Filed 8–21–13: 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14367–001]

Don W. Gilbert Hydro Power, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license to construct the Gilbert Hydroelectric Project, located on several unnamed springs near the Bear River in Caribou County, Idaho, and has prepared an environmental assessment (EA) for the project. The project would not occupy any federal lands.

The EA includes staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kelly Wolcott at (202) 502–6480.

Dated: August 15, 2013.

Kimberly D. Bose,

Secretary.

ENVIRONMENTAL ASSESSMENT FOR HYDROPOWER LICENSE

Gilbert Hydroelectric Project

FERC Project No. 14367–001

Idaho

Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing, 888 First Street NE., Washington, DC 20426.

August 2013.

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Acronyms and Abbreviations

APLIC Avian Power Line Interaction Committee
applicant Don W. Gilbert Hydro Power, LLC
certification water quality certification
CFR Code of Federal Regulations
cfs cubic feet per second
Commission Federal Energy Regulatory Commission
CWA Clean Water Act
EA environmental assessment
ESA Endangered Species Act
FERC Federal Energy Regulatory Commission
FPA Federal Power Act
FWS U.S. Department of the Interior, Fish and Wildlife Service
Idaho DEQ Idaho Department of Environmental Quality
Idaho DFG Idaho Department of Fish and Game
Idaho SHPO Idaho State Historic Preservation Office
Interior U.S. Department of the Interior
Gilbert Project Gilbert Hydroelectric Project
Gilbert Hydro Don W. Gilbert Hydro Power, LLC
kW kilowatt
MW megawatt
MWh megawatt-hour
National Register National Register of Historic Places
NEPA National Environmental Policy Act
NERC North American Electric Reliability Corporation
NHPA National Historic Preservation Act
project Gilbert Hydroelectric Project
WECC Western Electric Coordinating Council

Executive Summary

Proposed Action

On May 30, 2012, Don W. Gilbert Hydro Power, LLC (Gilbert Hydro or applicant) filed an application for an original license to construct and operate its proposed Gilbert Hydroelectric Project (project). The project would have an installed capacity of 90 kilowatts (kW) and would utilize the flow from several unnamed springs that converge into an unnamed channel that is a tributary to the Bear River. The project would be located eight miles southwest of the City of Grace, in Caribou County, Idaho. The project would not occupy any federal lands.

Proposed Project Description

The project would consist of the following new facilities: (1) An 8-foot-long, 3-foot-wide, 3-foot-deep drop inlet structure; (2) a 2-foot-diameter, 700-foot-long primarily above-ground steel or plastic penstock; (3) a powerhouse containing two 45- kW reaction turbine/generator units for a total installed capacity of 90 kW; (4) an approximately 25-foot-long tailrace to convey flows from the powerhouse to the existing stream channel that flows into the Bear River; (5) a 150-foot-long, 480-volt transmission line; and (6) appurtenant facilities. The project would divert up to 18 cubic feet per second to the project and generate an average of 550 megawatt-hours annually.

Proposed Environmental Measures

Project Design and Operation Features

- Operate in a run-of-river mode to maintain natural flows downstream of the project for the protection of aquatic resources;
- Design and construct the project transmission line in accordance with the most current raptor protection standards recommended by the U.S. Fish and Wildlife Service (FWS);
- Design the powerhouse to be small in size, similar in appearance to other buildings in the area, and finished with a color that blends in with the rural character of the area.

During Construction

- Implement industry-standard erosion control measures to minimize erosion and sedimentation;
- Stop construction immediately in the event of an inadvertent discovery of cultural resources or human remains, and contact the Idaho SHPO and the Shoshone-Bannock Tribes for guidance before continuing project construction or other project-related activity.

During Project Operation

- Implement a Revegetation Plan that includes: (1) Streambank improvement to enhance habitat downstream of the powerhouse; (2) revegetation of areas disturbed during construction with crested wheatgrass in the upland areas and Timothy grass or, if available, deep-rooted plants such as sedges and rushes

in the wetland areas to enhance vegetation, forage for livestock and wildlife, and wildlife habitat; and (3) use of certified weed-free seeds and cleaning of all equipment prior to entry into the construction site to prevent the establishment of noxious weeds.

Alternatives Considered

This environmental assessment (EA) considers the following alternatives: (1) Gilbert Hydro's proposal, as outlined above; (2) Gilbert Hydro's proposal with staff modifications (staff alternative); and (3) no action, meaning the project would not be built.

Staff Alternative

Under the staff alternative, the project would be constructed, operated, and maintained as proposed by Gilbert Hydro with the modifications and additions described below. Our recommended modifications and additional environmental measures include, or are based on, recommendations made by state agencies that have an interest in resources that may be affected by the proposed project.

Under the staff alternative, the project would include most of Gilbert Hydro's proposed measures, as outlined above, with the exception of the streambank improvement program proposed as part of the Revegetation Plan. We do not recommend this measure because the streambank improvement would be implemented downstream of the project and the run-of-river operation would ensure that there would be no project-related effects on downstream aquatic and riparian resources and therefore this measure does not have a sufficient nexus to project effects.

The staff alternative includes the following staff modifications and additional measures:

- An Erosion and Sediment Control Plan that includes site-specific measures;
- Modification of the Revegetation Plan to include the use of native sedges and rushes during replanting of disturbed wetland areas, instead of Timothy grass as proposed;
- Developing the final transmission line design, in consultation with the FWS, to adhere to the most current Avian Power Line Interaction Committee (APLIC) standards;
- Notify the Commission, in addition to the Idaho SPHO and Shoshone-Bannock Tribes, and develop measures in consultation with the Idaho SHPO and the Shoshone-Bannock Tribes if previously unidentified archeological or historic properties are discovered; and
- In addition to finishing the powerhouse in a color that blends in with the rural character of the area, avoid reflective materials and highly-contrasting colors in both the penstock and powerhouse to reduce their visibility from surrounding properties and public roads.

No Action Alternative

Under the no-action alternative, the project would not be built, environmental resources in the project area would not be affected, and the renewable energy that would be produced by the project would not be developed.

Public Involvement and Areas of Concern

Before filing its license application, Gilbert Hydro conducted pre-filing consultation under the traditional licensing process. The intent of the Commission's pre-filing process is to initiate public involvement early in the project planning process and to encourage citizens, governmental entities, tribes, and other interested parties to identify and resolve issues prior to an application being formally filed with the Commission.

After Gilbert Hydro filed its application, the Commission issued a public notice on October 17, 2012, of its intent to waive scoping, stating the application was ready for environmental analysis, and requesting comments, terms and conditions, and recommendations. The notice also stated our intention to waive additional study requests and three-stage consultation.

Staff received comments and recommendations from the State of Idaho on behalf of Idaho Department of Environmental Quality, Idaho Department of Fish and Game (Idaho DFG), Idaho Water Resource Board, and Idaho State Board of Land Commissioners. We also received a letter from the U.S. Department of the Interior, noting that it received and reviewed the license application and had no comments to offer.

The primary issues associated with licensing the project are erosion and sedimentation control, native plant restoration, noxious weed control, raptor protection, and aesthetic resource protection.

Staff Alternative

Geology and Soils Resources

Project construction would temporarily increase soil erosion during vegetation clearing and excavation for the drop inlet structure, penstock, powerhouse, and transmission line. Implementing staff's recommended Erosion and Sediment Control Plan, which would include industry-standard erosion and sediment control measures as proposed by Gilbert Hydro but with site-specific measures, would minimize project effects on soil erosion. Operating the project in a run-of-river mode as proposed by Gilbert Hydro would minimize streambank erosion.

Aquatic Resources

Constructing the drop inlet structure, penstock, and powerhouse as well as initial project operation would temporarily increase sedimentation and turbidity in project waters. However, adverse effects would be minimized through the staff- recommended Erosion and Sediment Control Plan.

Gilbert Hydro's proposed run-of-river operation would ensure that natural flows in the channel below the powerhouse for the protection of aquatic resources. Run-of-river operation would also minimize the potential for any adverse effects on water quality.

Terrestrial Resources

Constructing the project would temporarily disturb 0.5 acre of vegetation and about 0.1 acre of vegetation would be permanently lost. Gilbert Hydro's proposed Revegetation Plan would enhance the recovery of native vegetation in upland areas, and minimize the establishment of noxious weeds. Using native sedges and rushes to replant disturbed wetland areas, instead of Timothy grass, would assist in the recovery of native plant species that are beneficial to wildlife by providing forage and habitat.

Gilbert Hydro's proposal to design and construct the project transmission line in accordance with the most current raptor protection standards recommended by the FWS would minimize adverse interactions between the project's transmission line and raptors. Designing the transmission line in consultation with FWS and adhering to APLIC standards would ensure adequate protection.

Threatened and Endangered Species

No federally listed endangered or threatened species are known to occur in the project area; therefore, the project would have no effect on federally listed species.

Aesthetic Resources

Project facilities would be visible over a wide area because of sloping topography and low-growing vegetation. Gilbert Hydro's proposal to construct a small powerhouse, similar in

appearance to nearby buildings, with a color that blends with the rural character of the area would reduce visual effects. Avoiding reflective materials and highly-contrasting colors for both the penstock and powerhouse would reduce their visibility and help maintain the existing character of the landscape.

Cultural Resources

No cultural resources eligible for or included in the National Register of Historic Places are known to exist in the project area. Therefore, the project would have no effect on cultural resources.

Gilbert Hydro's proposal to stop construction if previously unidentified archeological or historic properties are discovered and contact the Idaho SHPO and Shoshone-Bannock Tribes prior to continuing construction would help protect any newly discovered cultural resources.

No-Action Alternative

Under the no-action alternative, the project would not be built, environmental resources in the project area would not be affected, and the renewable energy that would be produced by the project would not be developed.

Conclusions

Based on our analysis, we recommend licensing the project as proposed by Gilbert Hydro, with some staff modifications and additional measures.

In section 4.2 of the EA, we estimate the likely cost of alternative power for each of the three alternatives identified above. Under the no-action alternative, the project would not be constructed and would not produce any power. Our analysis shows that during the first year of operation under the proposed action alternative, project power would cost $8,400, or $15.27 per megawatt-hour (MWh) more than the likely alternative cost of power. Under the staff alternative, project power would cost $8,510, or $15.48/MWh, more than the likely alternative cost of power.

We chose the staff alternative as the preferred alternative because: (1) The project would provide a dependable source of electrical energy for the region (550 MWh annually); (2) the 90 kW of electric capacity comes from a renewable resource that does not contribute to atmospheric pollution, including greenhouse gases; and (3) the recommended environmental measures proposed by Gilbert Hydro, as modified by staff, would adequately protect and enhance environmental resources affected by the project. The overall benefits of the staff alternative would be worth the cost of the proposed and recommended environmental measures.

We conclude that issuing an original license for the project, with the environmental measures we recommend, would not be a major federal action significantly affecting the quality of the human environment.

Environmental Assessment

Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing, Washington, DC

Gilbert Hydroelectric Project

FERC Project No. 14367–001—Idaho

1.0 INTRODUCTION

1.1 APPLICATION

On May 30, 2012, Don W. Gilbert Hydro Power, LLC (Gilbert Hydro or applicant) filed an application for an original minor license for the construction, operation, and maintenance of the proposed Gilbert Hydroelectric Project (Gilbert Project or project). The 90-kilowatt (kW) project would be constructed on a channel formed from flows of five unnamed springs. The project would be located about 1,000 feet upstream from the confluence with the Bear River and eight miles southwest of the City of Grace in Caribou County, Idaho. The project would be located on private lands owned by the applicant and would not occupy any federal lands. The project would generate an average of about 550 megawatt-hours (MWh) of energy annually.

1.2 PURPOSE OF ACTION AND NEED FOR POWER

1.2.1 Purpose of Action

The purpose of the proposed Gilbert Project is to provide a new source of hydroelectric power. Therefore, under the provisions of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission or FERC) must decide whether to issue a license to Gilbert Hydro for the Gilbert Project and what conditions should be placed on any license issued. In deciding whether to issue a license for a hydroelectric project, the Commission must determine that the project will be best adapted to a comprehensive plan for improving or developing a waterway. In addition to the power and developmental purposes for which licenses are issued (such as flood control, irrigation, or water supply), the Commission must give equal consideration to the purposes of: (1) Energy conservation; (2) the protection of, mitigation of damage to, and enhancement of fish and wildlife resources; (3) the protection of recreational opportunities; and (4) the preservation of other aspects of environmental quality.

Issuing an original license for the Gilbert Project would allow Gilbert Hydro to generate electricity at the project for the term of a license, making electric power from a renewable resource available for use and sale.

This environmental assessment (EA) assesses the effects associated with the construction and operation of the proposed project, and alternatives to the proposed project, and makes recommendations to the Commission on whether to issue an original license, and if so, recommends terms and conditions to become part of any license issued.

In this EA, we assess the environmental and economic effects of constructing and operating the project: (1) As proposed by Gilbert Hydro, and (2) with our recommended measures. We also consider the effects of the no-action alternative. Important issues that are addressed include erosion and sedimentation control; and vegetation, wildlife, and cultural resources protection.

1.2.2 Need for Power

The Gilbert Project would provide hydroelectric generation to meet part of Idaho's power requirements, resource diversity, and capacity needs. The project would have an installed capacity of 90 kW and generate approximately 550 MWh per year. The electricity generated by the project in excess of Gilbert Hydro's needs would be sold to Rocky Mountain Power.

The North American Electric Reliability Corporation (NERC) annually forecasts electrical supply and demand nationally and regionally for a 10-year period. The Gilbert Project is located in the Basin subregion [1] of the Western Electricity Coordinating Council (WECC) region of the NERC. According to NERC's 2012 forecast, average annual demand requirements for the WECC region are projected to grow at a rate of 1.6 percent from 2012 through 2022. NERC projects planning reserve margins (capacity resources in excess of net internal demand) will be 15 percent during the 10-year forecast period, including estimated new capacity additions. Over the next 10 years, WECC estimates that about 19,361 MW of future planned capacity will be brought on line.

[1] The Basin subregion is a summer-peaking subregion composed of all or major portions of the states of Idaho, Nevada, Utah, and Wyoming.

We conclude that power from the Gilbert Project would help meet a need for power in the WECC region in both the short and long-term. The project would provide power that displaces generation from non-renewable sources. Displacing the operation of non-renewable facilities may avoid some power plant emissions, thus creating an environmental benefit.

1.3 STATUTORY AND REGULATORY REQUIREMENTS

A license for the proposed project is subject to numerous requirements under the FPA and other applicable statutes. The major regulatory and statutory requirements are summarized in table 1 and described below.

TABLE 1—MAJOR STATUTORY AND REGULATORY REQUIREMENTS FOR THE GILBERT PROJECT

[Source: staff]

Requirement	Agency	Status
Section 18 of the FPA	FWS	No fishway prescriptions or reservation of authority to prescribe fishways have been filed.
Section 10(j) of the FPA	Idaho DFG	The State of Idaho, on behalf of Idaho DFG, provided section 10(j) recommendations on December 13, 2012.
Clean Water Act—water quality certification.	Idaho DEQ	The application for water quality certification was received on March 5, 2013; due by March 5, 2014.
Endangered Species Act Consultation	FWS	No federally listed species are known to occur within or near the project area; therefore, the project would have no effect on any federally listed species.
National Historic Preservation Act	Idaho SHPO	The Idaho SHPO determined on December 7, 2011, that no historic properties would be affected by the federal licensing action.

Notes: FWS—U.S. Department of the Interior, Fish and Wildlife Service. Idaho DFG—Idaho Department of Fish and Game. Idaho DEQ—Alaska Department of Environmental Quality. Idaho SHPO—Alaska State Historic Preservation Officer.

1.3.1 Federal Power Act

1.3.1.1 Section 18 Fishway Prescriptions

Section 18 of the FPA states that the Commission is to require construction, operation, and maintenance by a licensee of such fishways as may be prescribed by the Secretaries of Commerce or the Interior.

No fishway prescriptions, or request for reservation of authority to prescribe fishways under section 18 of the FPA, have been filed.

1.3.1.2 Section 10(j) Recommendations

Under section 10(j) of the FPA,16 U.S.C. 803(j), each hydroelectric license issued by the Commission must include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, or enhancement of fish and wildlife resources affected by the project. The Commission is required to include these conditions unless it determines that they are inconsistent with the purposes and requirements of the FPA or other applicable law. Before rejecting or modifying an agency recommendation, the Commission is required to attempt to resolve any such inconsistency with the agency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency.

The Idaho Department of Fish and Game (Idaho DFG) timely filed, on December 13, 2012, recommendations under section 10(j), as summarized in table 6 in section 5.4, *Fish and Wildlife Agency Recommendations*. In section 5.4, we also discuss how we address the agency recommendations and comply with section 10(j).

1.3.2 Clean Water Act

Under section 401 of the Clean Water Act (CWA), a license applicant must obtain certification from the appropriate state pollution control agency verifying compliance with the CWA. On March 5, 2013, Gilbert Hydro applied to the Idaho Department of Environmental Quality (Idaho DEQ) for 401 water quality certification (certification) for the Gilbert Project. Idaho DEQ received this request on the same day. The Idaho DEQ has not yet acted on the request. Idaho DEQ's action on the request is due by March 5, 2014.

1.3.3 Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species.

No federally listed or proposed species, or critical habitats, are known to occur in the project area, and the FWS stated that the proposed project would not affect any of its trust species (email communication on March 21, 2013, between C. Myler, Partners Biologist, U.S Fish and Wildlife Service, and K. Wolcott, Environmental Biologist, FERC, Washington, DC, filed on March 29, 2013). Therefore, we conclude that licensing the Gilbert Hydroelectric Project, as proposed with staff-recommended measures, would have no effect on any federally listed species and no further consultation is required under the ESA.

1.3.4 National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires that every federal agency "take into account" how each of its undertakings could affect historic properties. Historic properties are districts, sites, buildings, structures, traditional cultural properties, and objects significant in American history, architecture, engineering, and culture that are eligible for inclusion in the National Register of Historic Places (National Register).

Pursuant to section 106, Gilbert Hydro consulted with the Idaho State Historic Preservation Officer (Idaho SHPO) and affected Indian tribes to locate, determine National Register eligibility, and assess potential adverse effects on historic properties associated with the proposed project. By letter dated August 15, 2011,[2] the Shoshone-Bannock Tribes commented that the proposed project would be located on private land. No comments were provided on the presence of any cultural resources. The tribes requested project construction cease in the event of an inadvertent discovery (cultural resources and/or human remains) and Gilbert Hydro consult with the tribes to ensure proper treatment of the cultural resources and/

[2] A copy of the letter can be found in Appendix E of the final license application.

or human remains. By letter dated December 7, 2011,[3] the Idaho SHPO commented that an archaeological survey would not be productive, withdrew its previous recommendation for a survey,[4] and determined that the project would have no effect on historic properties. As a result of these findings made by the tribes and the Idaho SHPO's concurrence that no historic properties would be affected by the project, the drafting of a programmatic agreement to resolve adverse effects on historic properties will not be necessary.

1.4 PUBLIC REVIEW AND COMMENT

The Commission's regulations (18 Code of Federal Regulations [CFR], section 4.38) require that applicants consult with appropriate resource agencies, tribes, and other entities before filing an application for a license. This consultation is the first step in complying with the Fish and Wildlife Coordination Act, ESA, NHPA, and other federal statutes. Pre-filing consultation must be complete and documented according to the Commission's regulations.

1.4.1 Scoping

Due to the small size and location of the proposed project on private lands owned by the applicant, the close coordination with state and federal agencies during the preparation of the application, agency comments, and completed studies, we waived public scoping.[5]

1.4.2 Interventions

On October 17, 2012, the Commission issued a notice that it had accepted Gilbert Hydro's application to license the Gilbert Project, solicited motions to intervene and protest, and solicited comments and final terms and conditions, recommendations, and prescriptions. The notice set December 17, 2012, as the filing deadline. On December 13, 2012, the State of Idaho filed a timely motion to intervene, not in opposition, and comments on behalf of Idaho DEQ, Idaho DFG, Idaho Water Resource Board, and Idaho State Board of Land Commissioners. On December 10, 2012, Interior filed a letter stating that it had no comments on the application. Gilbert Hydro filed no reply comments.

2.0 PROPOSED ACTION AND ALTERNATIVES

2.1 NO–ACTION ALTERNATIVE

The no-action alternative is license denial. Under the no-action alternative, the project would not be built and environmental resources in the project area would not be affected.

2.2 APPLICANT'S PROPOSAL

2.2.1 Project Facilities

The proposed project would consist of the following new facilities: (1) An 8-foot-long, 3-foot-wide, 3-foot-deep drop inlet structure that would divert flow from the unnamed natural stream channel into; (2) a 2-foot-diameter, 700-foot-long primarily above-ground[6] steel or plastic penstock; (3) a powerhouse containing two 45- kW reaction turbine/generator units for a total installed capacity of 90 kW; (4) an approximately 25-foot-long tailrace to convey flows from the powerhouse back to the existing stream channel; (5) a 150-foot-long, 480-volt transmission line that would connect to Rocky Mountain Power's three-phase line; and (6) appurtenant facilities. The drop inlet structure, penstock, powerhouse, and tailrace would bypass an approximately 800-foot-long reach of an existing stream channel that conveys flow from the unnamed springs to the Bear River. The project would divert up to 18 cubic feet per second (cfs) to the project. Project facilities are shown in figures 1 and 2.

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[2] A copy of the letter can be found in Appendix E of the final license application.

[3] A copy of the letter can be found in Appendix E of the final license application.

[4] The previous recommendation for a survey was included in a letter dated June 29, 2011. A copy of the letter can be found in Appendix E of the final license application.

[6] Approximately 20 feet of the upper end of the penstock where it connects to the drop inlet structure would be buried.

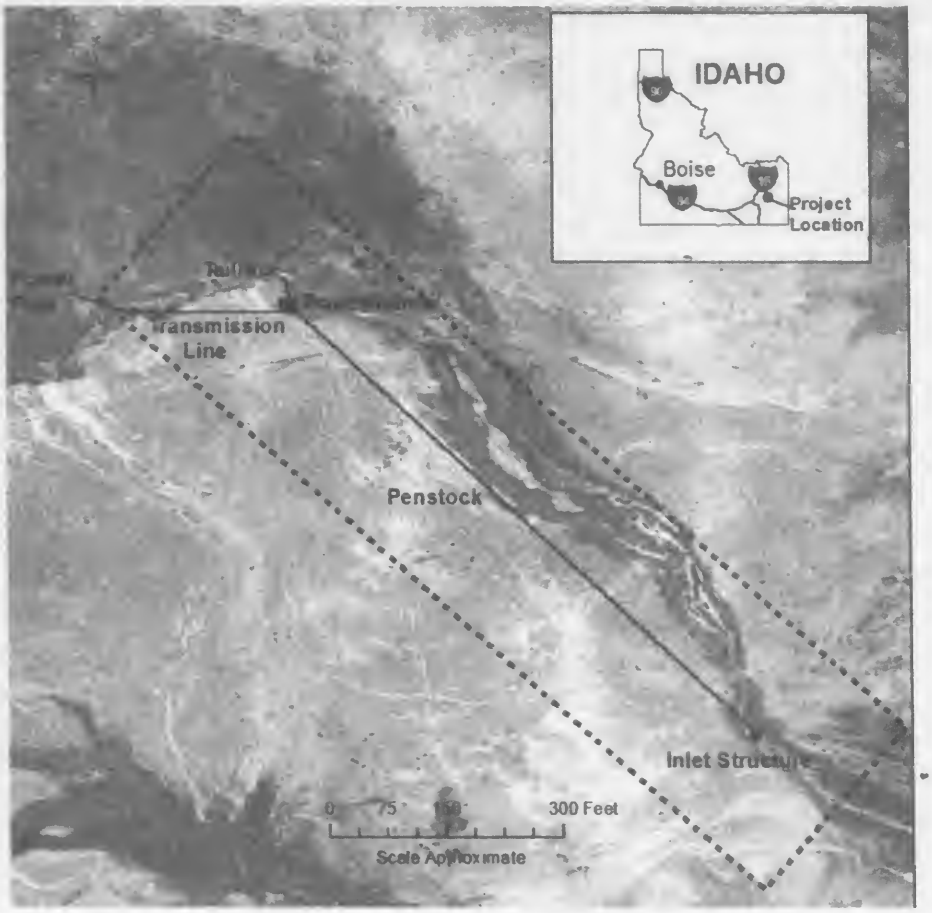

Figure 1. Location map and project features for the Gilbert Hydroelectric Project, FERC No. 14367 (Source: Staff).

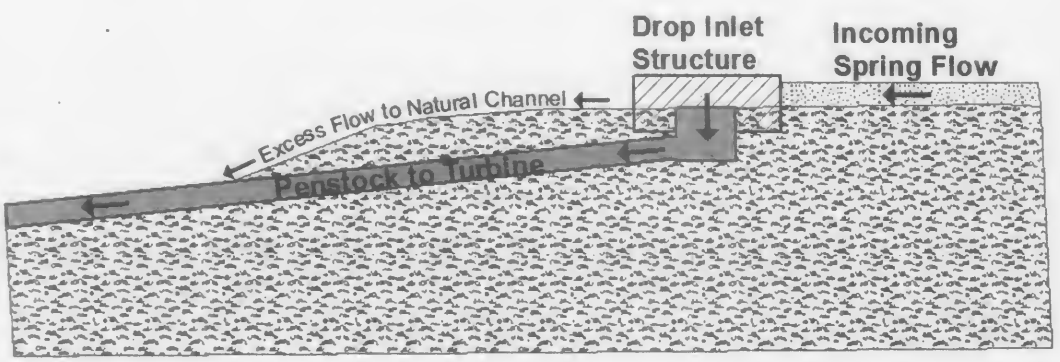

Figure 2. Schematic of drop inlet structure for the Gilbert Hydroelectric Project, FERC No. 14367 (Source: application, as modified by staff).

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The proposed 900-foot-long, 300-foot-wide project boundary would enclose all of the project facilities listed above.

2.2.2 Project Safety

As part of the licensing process, the Commission would review the adequacy of the proposed project facilities. Special articles would be included in any license issued, as appropriate. Commission staff would inspect the licensed project both during and after construction. Inspection during construction would concentrate on adherence to Commission-approved plans and specifications, special license articles relating to construction, and accepted engineering practices and procedures. Operational inspections would focus on the continued safety of the structures, identification of unauthorized modifications, efficiency and safety of operations, compliance with the terms of the license, and proper maintenance.

2.2.3 Proposed Environmental Measures

Project Design and Operation Features

- Operate in a run-of-river mode to maintain natural flows downstream of the project for the protection of aquatic resources;
- Design and construct the project transmission line in accordance with the most current raptor protection standards recommended by the U.S. Fish and Wildlife Service (FWS);
- Design the powerhouse to be small in size, similar in appearance to other buildings in the area, and finished with a color that blends in with the rural character of the area.

During Construction

- Implement industry-standard erosion control measures to minimize erosion and sedimentation;
- Stop construction immediately in the event of an inadvertent discovery of cultural resources or human remains, and contact the Idaho SHPO and the Shoshone-Bannock Tribes for guidance before continuing project construction or other project-related activity.

During Project Operation

- Implement a Revegetation Plan that includes: (1) Streambank improvement to enhance habitat downstream of the powerhouse; (2) revegetation of areas disturbed during construction with crested wheatgrass in the upland areas and Timothy grass or, if available, deep-rooted plants such as sedges and rushes in the wetland areas to enhance vegetation, forage for livestock and wildlife, and wildlife habitat; and (3) use certified weed-free seeds and cleaning of all equipment prior to entry into the construction site to prevent the establishment of noxious weeds.

2.3 STAFF ALTERNATIVE

Under the staff alternative, the project would be constructed, operated, and maintained as proposed by Gilbert Hydro with the modifications and additions described below. Our recommended modifications and additional environmental measures include, or are based on, recommendations made by state resource agencies that have an interest in resources that may be affected by the proposed project.

Under the staff alternative, the project would include most of Gilbert Hydro's proposed measures, as outlined above, with the exception of the streambank improvement program proposed as part of the Revegetation Plan. In addition, the staff alternative includes the following modifications and additional measures:

- An Erosion and Sediment Control Plan that includes site-specific measures;
- Modification of the Revegetation Plan to include the use of native sedges and rushes during replanting of disturbed wetland areas, instead of Timothy grass as proposed;
- Developing the final transmission line design, in consultation with the FWS, to adhere to the most current APLIC standards;
- Notify the Commission, in addition to the Idaho SPHO and Shoshone-Bannock Tribes as proposed, and develop measures in consultation with the Idaho SHPO and the Shoshone-Bannock Tribes if previously unidentified archeological or historic properties are discovered; and
- In addition to finishing the powerhouse with a color that blends in with the rural character of the area, avoid reflective materials and highly-contrasting colors in the finished appearance of both the penstock and powerhouse to reduce their visibility from surrounding properties and public roads.

Proposed and recommended measures are discussed under the appropriate resource sections and summarized in section 4 of the EA.

3.0 ENVIRONMENTAL ANALYSIS

In this section, we present: (1) A general description of the project vicinity; (2) an explanation of the scope of our cumulative effects analysis; and (3) our analysis of the proposed action and other recommended environmental measures. Sections are organized by resource area. Under each resource area, historical and current conditions are first described. The existing condition is the baseline against which the environmental effects of the proposed action and alternatives are compared, including an assessment of the effects of proposed mitigation, protection, and enhancement measures, and any potential cumulative effects of the proposed action and alternatives. Staff conclusions and recommended measures are discussed in section 5.2, *Comprehensive Development and Recommended Alternative* of the EA.[7]

3.1 GENERAL DESCRIPTION OF THE RIVER BASIN

The project would be located in southeastern Idaho, about eight miles southwest of the City of Grace. The project would utilize flows from five unnamed springs that converge immediately upstream of the proposed project location and flow about 0.4 mile through an existing unnamed stream channel into the Bear River at approximately river mile (RM) 154.[8] The Bear River, from its headwaters in the Uinta Mountains to its mouth at the Great Salt Lake, is approximately 500 miles in length and drains a basin of 7,500 square miles. The unnamed springs are located within the Middle Bear subbasin which consists of the Bear River and its tributaries from Alexander dam (RM 170) to the Utah state line (RM 94).

The project would be located in the Gentile Valley of southeastern Idaho. The topography of the area is characterized by relatively flat terrain of the valley floor running north and south along the Bear River, steep bluffs composed of river terraces to the east, and the forested ridges of the Portneuf Mountains to the west. Land in the project area is primarily used for agricultural purposes including livestock grazing and hay and crop production.

The climate of the Bear River Basin is generally continental and semiarid. The average annual precipitation in the City of Grace is 14.7 inches and the average snowfall is 44.7 inches, with the highest amount of snow falling in the months of December and January. Temperatures range from an average low of 10.2 degrees Fahrenheit in January to an

[7] Unless noted otherwise, the sources of our information are the license application (Don W. Gilbert Hydro Power, LLC, 2012) and additional information filed by DeAnn Simonich for Gilbert Hydro Power on April 4, 2013.

[8] River miles were estimated based on Schmidt and Beck, 1975.

average high of 84.9 degrees Fahrenheit in July.[9]

3.2 SCOPE OF CUMULATIVE EFFECTS ANALYSIS

According to the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (40 C.F.R. section 1508.7), cumulative effect is the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time, including hydropower and other land and water development activities.

Based on our review of the license application and agency comments, we have not identified any resources as having the potential to be cumulatively affected by the proposed project in combination with other past, present, and future activities.

3.3 PROPOSED ACTION AND ACTION ALTERNATIVES

In this section, we discuss the effects of the project alternatives on environmental resources. For each resource, we first describe the affected environment, which is the existing condition and baseline against which we measure effects. We then discuss and analyze the site-specific environmental issues.

Only the resources that would be affected, or about which comments have been received, are addressed in detail in this EA. Based on this, we have determined that geologic and soils, aquatic, terrestrial, cultural, and aesthetic resources may be affected by the proposed action and action alternatives. We have not identified any substantive issues related to land use, recreation, or socio-economic resources associated with the proposed action, and therefore, these resources are not assessed in the EA. We present our recommendations in section 5.2, *Comprehensive Development and Recommended Alternative.*

3.3.1 Geologic and Soils Resources

3.3.1.1 Affected Environment

The proposed project is located on a rocky bluff, characterized as lithic bedrock[10] overlain by shallow loams[11] (personal communication on February 26, 2013, between B. Griffith, Soil Survey Project Leader, Natural Resource Conservation Service, Soda Springs, Idaho, and J. Harper, Engineer, FERC, Washington, DC, filed August 14, 2013). The drop inlet structure would be constructed on a rocky bluff, where the bedrock outcroppings are more pronounced. The penstock and powerhouse would be constructed over pasture lands with shallow loamy soils overlaying bedrock. The density of the vegetation near the proposed powerhouse location is restricted by the shallow depth of the soils and rocky outcroppings. Slopes in the project area range from 4 to 12 percent.

3.3.1.2 Environmental Effects

Land-disturbing activities associated with the proposed project construction, operation, and maintenance could cause erosion and sedimentation. To minimize erosion and sedimentation during construction activities, Gilbert Hydro proposes to: (1) Implement industry-standard erosion control measures, and (2) reseed or replant areas disturbed during construction with crested wheatgrass in the upland areas and Timothy grass or deep-rooted plants such as sedges and rushes, if available, in the wetland areas, as part of the Revegetation Plan.

Idaho DFG recommends the applicant's proposed measures and deferred to Idaho DEQ to define specific measures to control or minimize erosion as part of the WQC.

Our Analysis

Due to the semi-arid conditions and the rocky outcrops in the project area, erosion potential as a result of project construction activities would be low. Nevertheless, vegetation clearing and ground-disturbing excavation activities associated with construction of the drop inlet structure, penstock, powerhouse, and transmission line could cause a minor amount of soil erosion. Gilbert Hydro's proposal to implement erosion control measures during project construction should minimize soil erosion and sedimentation in project in waters. However, other than noting that its proposed measures would be consistent with industry standards, Gilbert Hydro does not provide any detail on the measures that it would implement. A site-specific Erosion and Sediment Control Plan would enable the Commission to document that the proposed measures are adequate to minimize the potential for soil erosion and sedimentation of project lands and waters. Revegetation of areas disturbed during construction would provide further protection from erosion. Revegetation is discussed further in section 3.3.3, *Terrestrial Resources.*

3.3.2 Aquatic Resources

3.3.2.1 Affected Environment

Water Quantity and Quality

A natural channel draining five unnamed springs would be the source water for the project. The flow from the unnamed stream channel flows about 0.4 mile to its confluence with the Bear River. During a normal year, the amount of combined flow in the springs ranges from 10 to 15 cfs, with higher flows up to 20 cfs possible during spring months. Flow measurements near the proposed powerhouse location collected in October 2009 recorded a flow rate of 13 cfs.

There is no information in the project record on the water quality of the unnamed springs; however, given that it originates from natural springs a short distance from the point of diversion and only flows for about 0.4 mile before entering the Bear River, water quality in the unnamed springs is likely excellent.

Fisheries Resources and Aquatic Habitat

Aquatic habitat in the existing stream channel downstream of the convergence of the five unnamed springs includes two distinct stream reaches: (1) An approximately 1,200 foot-long upper reach, and (2) an approximately 1,000-foot-long lower reach. A cascade/plunge pool complex forms the transition between the upper and lower reaches and also creates a natural barrier to fish attempting to access the upper reach. The upper reach predominately consists of shallow braided channels with an average gradient of 20 percent. The lower reach extends from the cascade/plunge pool complex to the confluence with the Bear River and ranges from 10 to 20 feet in width with water depths of less than one foot. The lower reach has a lower gradient than the upper reach and substrate consists primarily of silt, sand, and fine gravels. The entire length of the stream channel within the project area is located within existing agricultural lands used for livestock grazing. Grazing has resulted in erosion and streambank degradation in portions of the lower reach.

In August 2011, Idaho DEQ conducted fish surveys in two areas in the lower reach between the cascade/plunge pool complex and the confluence with the

[9] Historical data from the Western Regional Climate Center, 1907–2012, available at *http://www.wrcc.dri.edu.*

[10] Lithic bedrock is differentiated from paralithic bedrock by its hardness and is far less erodible than paralithic bedrock or overlaying soils.

[11] Loams are soils that consist of relatively equal amounts of silts, sands, and clay.

Bear River. The survey collected four fish species: rainbow trout, Bonneville cutthroat trout, brook trout, and sculpin. All species are common in the project vicinity. Bonneville cutthroat trout collected during the survey consisted of both naturally spawned and stocked individuals. No fish surveys were conducted upstream of the cascade/plunge pool complex, and there is no evidence of fish inhabiting the upper reach; however, Idaho DEQ reported that it appeared to be a barrier to upstream fish passage.

Other fish known to occur in the mainstem Bear River near the proposed project include brown trout, mountain whitefish, common carp, Utah sucker, mountain sucker, smallmouth bass, yellow perch, mottled sculpin, and Paiute sculpin (FERC, 2003).

3.3.2.2 Environmental Effects

Water Quantity and Quality

To protect water quality during construction, Gilbert Hydro proposes to use unspecified erosion control measures that it states would be consistent with industry standards to minimize sediment from washing into the existing stream channel during project construction.

During project operation, Gilbert Hydro proposes to operate the project in a run-of-river mode diverting up to 18 cfs for power generation.

Idaho DFG recommends that Gilbert Hydro obtain the necessary water rights to operate the proposed project or downsize the project to be consistent with the existing water rights permit.

Our Analysis

Constructing the proposed project would temporarily increase soil erosion and sedimentation. As discussed in section 3.3.1, *Geologic and Soil Resources*, Gilbert Hydro's proposed erosion control measures using industry standards, and staff's recommended development of an Erosion Sediment Control Plan would limit soil erosion and sedimentation, and related turbidity effects in the stream channel.

Operating the proposed project in a run-of-river mode would ensure that all diverted water is returned to the natural stream channel below the powerhouse for the protection of aquatic resources. In the event that the powerhouse trips off-line, flows would immediately bypass the penstock and powerhouse and return to the bypassed reach at the point of diversion; therefore, project operation would have no effect on flows above the diversion or below the powerhouse. In addition, operating the project in run-of-river mode and without the use of a reservoir or impoundment would eliminate the potential for changes to water quality conditions that could occur if streamflow was impounded or stored by the project.

In regard to Idaho DFG's recommendation that Gilbert Hydro obtain the necessary water rights to operate the proposed project or downsize the project to be consistent with the existing water rights permit, Commission licenses include a standard article that requires licensees to require all rights necessary for operation and maintenance of a project within five years of license issuance.

Fisheries Resources and Aquatic Habitat

In its Revegetation Plan, Gilbert Hydro proposes to cooperate with federal and state agencies to develop a streambank improvement program in the existing stream channel downstream of the powerhouse. Gilbert Hydro states that it would not provide funding for the program and that it must approve any program elements that could potentially adversely affect agricultural use of its lands. Idaho DFG states that it would work with Gilbert Hydro to provide a funding source for the proposed streambank improvement program.

Our Analysis

Gilbert Hydro proposes to construct a drop inlet structure and 700-foot-long penstock to divert up to up to 18 cfs of flow from the existing stream channel to a new powerhouse located approximately 1,000 feet upstream from the confluence with the Bear River. The proposed powerhouse would be constructed adjacent to a cascade/plunge pool complex in the existing stream channel that forms a natural barrier to upstream fish passage. Water diverted for power production would be discharged from the powerhouse into a 25-foot-long tailrace channel that would return flows to the existing stream channel at a location immediately downstream of the cascade/plunge pool complex. Gilbert Hydro's proposal would result in the elimination or reduction of flow in the 800-foot-long bypassed reach between the point of diversion at the drop inlet structure and the location where the tailrace channel returns flow back to the existing stream channel. Although flow diversion would eliminate aquatic habitat in the bypassed reach during most of the year, there is no information in the project record to suggest that fish inhabit this reach. Therefore, there would be no effect on the existing fish community in the project area from reduction of habitat availability.

Gilbert Hydro's proposal to implement a streambank improvement program downstream of the proposed powerhouse location could potentially enhance aquatic and riparian habitat conditions downstream of the project. However, operation of the proposed project in run-of-river mode would not result in adverse effects to aquatic and riparian habitat downstream of the project and outside of the project boundary. Further, Gilbert Hydro does not provide any specific measures to be implemented under the program or a schedule for implementation. Without specific measures, we cannot evaluate the environmental effects of the program or its relationship to the project.

3.3.3 Terrestrial Resources

3.3.3.1 Affected Environment

Vegetation

The project area occurs entirely within agricultural crop and pasture land and grasslands. The area surrounding the project in all directions also consists of similar lands, with small remnants of sagebrush-steppe scrub habitat preserved in areas of rugged topography. Similar to the topography of the stream channel, the terrestrial component of the project area can be divided into two components: a flat upper pasture section and a flat lower pasture section. The boundary between the upper and lower pastures is marked by a high gradient reach where the existing stream channel descends through the cascade/plunge pool complex. The boundary between the upper and lower pastures is marked by a high gradient reach of the stream channel where it descends to a second, smaller bluff. The topographic drop across this bluff provides the potential energy for hydropower generation.

The dominant vegetation type in both components is pasture grass and forbs. The lower pasture is more sparsely vegetated than the upper pastures due to the presence of thin soils and rocky substrate in the lower pasture. The banks of the existing stream channel consist of saturated wetlands varying in total width from approximately 10 feet (including the stream channel) along incised portions of the creek to approximately 100 feet in braided segments of the creek. Small areas of shrub-scrub vegetation occur along the bluffs and other small areas of rugged topography not suited for pasture grass.

GeoSense conducted a wetlands reconnaissance survey for Gilbert Hydro in the project area in July 2011 to delineate wetland boundaries and

support the assessment of potential project effects. The survey was extended into the upper pasture area above the location of proposed project facilities to more thoroughly describe the overall nature of the wetlands complex in the project area. A total of 7.3 acres, all located on lands owned by the applicant, were mapped.

Wildlife

Wildlife resources in the project area include yellow-bellied marmot, squirrels, raccoons, mule deer, and various species of birds such as American kestrel, common nighthawk, mourning dove, red-breasted nuthatch, song sparrow, common snipe, cinnamon teal, Brewer's blackbird, and black-billed magpie (Idaho Department of Lands, 2004). Common species of waterfowl use the Bear River, which adjoins the lower pasture approximately 1,000 feet below the powerhouse site.

3.3.4.2 Environmental Effects

Vegetation

The proposed project would temporarily disturb 0.5 acre of wetland vegetation and permanently remove 0.1 acre of upland vegetation. The drop inlet structure and about 430 feet of the proposed penstock would be located in existing wetlands. The remainder of the penstock, powerhouse, and transmission line would be located in uplands areas. Gilbert Hydro proposes to implement a Revegetation Plan to revegetate areas disturbed during project construction.

The Revegetation Plan includes provisions to reseed and replant areas disturbed by project construction. The plant seed mixture would be certified weed-free. Gilbert Hydro proposes to reseed the upland areas with crested wheatgrass and the wetland areas with Timothy grass, or deep-rooted plants such as sedges or rushes, if available. Gilbert Hydro would also plant grasses as soon as possible after construction to revegetate disturbed areas, provide forage for livestock and wildlife, and enhance wildlife habitat. To control noxious weeds, Gilbert Hydro would clean all equipment prior to entry into the construction site. All tires (including treads), and undercarriages would be thoroughly cleaned to prevent the introduction and spread of noxious weeds. Idaho DFG recommends the applicant's proposed measures in the proposed Revegetation Plan with the exception of reseeding wetlands areas with Timothy grass. Instead, Idaho DFG recommends that Gilbert Hydro replant wetland areas with native sedges and rushes, and offered to help locate sources of native plants.

Our Analysis

The proposed Revegetation Plan would help to restore upland and wetland areas that were temporarily disturbed by project construction. Cleaning construction equipment prior to entering the project site would reduce the introduction and spread of invasive species. Reseeding and replanting wetland areas using native sedges and rushes instead of Timothy grass, as recommended by Idaho DFG, would promote and enhance native vegetation. Restoring disturbed wetland areas with native species and upland areas with the crested wheatgrass would also provide forage for livestock and wildlife and enhance wildlife habitat in the project area.

Wildlife

Gilbert Hydro proposes to construct the project transmission line in accordance with FWS's most current standard for raptor protection standards. Idaho DFG recommends that Gilbert Hydro consult with FWS to design appropriate raptor protection measures for the project transmission line.

Our Analysis

Constructing the transmission line to the most current raptor protection standards as recommended by, and in consultation with, FWS would minimize the risk of raptor collision and electrocution with the project transmission line.

Construction activities have the potential to disturb wildlife that occur in the project area. Increased human presence and noise associated with project construction, while expected to be minimal, may disturb and displace wildlife from the project area. Any potential disturbance or displacement is expected to be temporary. Permanent loss of 0.1 acre of upland habitat and temporary loss of 0.5 acre of wetland habitat would have a minor effect on wildlife. The effects of the proposed and recommended revegetation measures are discussed above under *Vegetation*.

3.3.4 Threatened, Endangered, and Sensitive Species

No federal listed, proposed, or candidate species are known to be present in the project area, and FWS stated that the proposed project would not affect trust species. Idaho DFG also stated that it is unaware of any federally listed species in the project area and agreed with the applicant that the project would not affect any federally listed species. Therefore, the project would not affect any threatened, endangered, or sensitive species or their habitats.

3.3.5 Cultural Resources

3.3.5.1 Affected Environment

Section 106 of the National Historic Preservation Act

Section 106 of the NHPA requires the Commission to evaluate potential effects on properties listed or eligible for listing in the National Register prior to an undertaking. An undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including, among other things, processes requiring a federal permit, license, or approval. In this case, the undertaking is the proposed issuance of an original license for the project. Potential effects associated with this undertaking include project-related effects associated with construction or the day-to-day operation and maintenance of the project after issuance of an original license.

According to the Advisory Council on Historic Preservation's (Advisory Council) regulations (36 C.F.R. section 800.16(l)(1)), an historic property is defined as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria. In this EA we also use the term "cultural resources" for properties that have not been evaluated for eligibility for listing in the National Register. In most cases, cultural resources less than 50 years old are not considered eligible for the National Register.

Section 106 also requires that the Commission seek concurrence with the Idaho SHPO on any finding involving effects or no effects on historic properties, and allow the Advisory Council an opportunity to comment on any finding of adverse effects on historic properties. If Native American properties have been identified, section 106 also requires that the Commission consult with interested Indian tribes that might attach religious or cultural significance to such properties.

Cultural Context

The project area is within a large region spanning Idaho and several adjoining states that was traditionally occupied by Northern Shoshone and Northern Paiute tribes. These distinct Native American groups were linguistically related and were hunters

and gatherers who moved with the seasons to collect food and other resources. Southeastern Idaho was a favored wintering area for both Shoshone and Bannock (Northern Paiute) bands.[12]

Early Euro-American contact with these tribes included John Jacob Astor's Pacific Fur Company expedition of 1811 to the Snake River region of southern Idaho, which initiated an intensive period of trapping through the 1830s. By 1843, the Oregon Trail along the Snake River had become well established as a migration route for Euro-American settlers bound for the Pacific Northwest. Mining, grazing, ranching, and settlement by non-natives led to major conflicts with the tribes, including the Bear River Massacre (1863),[13] Snake Indian War (1866–1868), and the Bannock War (1878).[14] As a consequence, the Fort Hall Indian Reservation was established by the Fort Bridger Treaty of 1868. Farming and ranching expanded across the region in the late 1800s, substantially aided by irrigation from the early 1900s through the present. More than 5,600 tribal members currently reside on or near the reservation, which is located about 30 miles away generally to the west and north of the project area.

No Cultural Resources or Historic Properties Identified

The area surrounding the proposed project has been disturbed by grazing, cultivation, and agricultural use, as well as by an existing Rocky Mountain Power transmission line. The area within the project boundary consists primarily of agricultural land. In 2011, Gilbert Hydro consulted with the Idaho SHPO and interested Indian tribes, and provided photographs of the proposed project site and a description of the proposed 90 kW project, including the proposed 150-foot-long transmission line. Gilbert Hydro stated in its application that an inventory and/or survey of cultural resources might not be warranted because the proposed project occupies a small area of land owned by Gilbert Hydro and used for past and current agricultural practices.

[12] History of the Shoshone-Bannock Tribes, available at *http://www.shoshonebannocktribes.com.*

[13] *Id.* The Bear River Massacre site, located at the confluence of the Bear River and Beaver Creek, is more than 30 miles downriver from the proposed project.

[14] A brief history of Euro-American contact with the tribes is contained in the Malad Hydroelectric Project Final Environmental Assessment (P–2726–012). Federal Energy Regulatory Commission. Washington, DC, September 24, 2004.

By letter dated August 15, 2011,[15] the Shoshone-Bannock Tribes commented that the proposed project area is within the ancestral lands of the Shoshone and Bannock people. No comments were provided on the presence of any cultural resources. In the event of an inadvertent discovery (cultural resources and/or human remains) during project construction, the tribes requested project construction cease and Gilbert Hydro consult with the tribes to ensure proper treatment of cultural resources and/or human remains.

3.3.5.2 Environmental Effects

By letter dated December 7, 2011, the Idaho SHPO agreed with Gilbert Hydro that an archaeological survey would not be productive, withdrew its recommendation for a survey, and determined that there would be no effect on historic properties.[16] Because no historic properties would be affected by the proposed project, a programmatic agreement and associated Historic Properties Management Plan are not needed. If previously unidentified archeological or historic properties are discovered during construction, operation, or maintenance of the project facilities, Gilbert Hydro proposes to immediately stop construction and notify the Idaho SHPO and Shoshone-Bannock Tribes for guidance prior to resuming the project-related activity.

Our Analysis

Previously unidentified archeological or historic properties may be discovered during project construction, operation, or maintenance. Gilbert Hydro's proposal to notify and consult with the Idaho SHPO and the Shoshone-Bannock Tribes would address any effects on cultural resources, if cultural resources are discovered during the term of any license issued.

Based on our independent analysis, we agree with the findings and determinations made by Gilbert Hydro, the Idaho SHPO, and the Shoshone-Bannock Tribes that the proposed project would have no adverse effect on historic properties. Although no historic properties are known to occur within the proposed project boundary, it is possible that cultural resources may be discovered during construction, operation, or maintenance of the project.

[15] A copy of the letter can be found in Appendix E of the final license application.

[16] Gilbert Hydro included each letter from the Shoshone-Bannock Tribes and the Idaho SHPO in its license application at Appendix E.

3.3.6 Aesthetic Resources

3.3.6.1 Affected Environment

The project area is located in an area of pasture, crop land, grasslands, rocky bluffs, and wetlands along existing springs that discharge through an existing stream channel to the Bear River. Extensive agricultural activities and related structures are sparsely scattered throughout the area. Farm roads, irrigation systems, and transmission lines are also present. The nearest public road is approximately 0.5 mile to the east. The project area is on private land surrounded by extensive farms, ranches, and open country with long viewing distances, particularly to the north, south, and west.

3.3.6.2 Environmental Effects

Construction and operation of the proposed project would affect aesthetic resources in the vicinity by introducing project facilities into a relatively undeveloped, rural and agricultural setting. Gilbert Hydro proposes to reduce visual effects by designing the powerhouse to be small in size, similar in appearance to other buildings in the area, and finished with a color that blends in with the rural character of the area.

No other specific concerns relating to noise or visual effects were expressed by agencies or other interested participants during project consultation.

Our Analysis

During construction, the presence of equipment and vehicles would have short-term negative effects on views and noise levels.

During operation, visual and noise effects are expected to be minor. The site of the proposed project and surrounding lands are owned by the applicant, and the nearest residence is approximately 1,000 feet to the northeast. Other residences and public roads in the area are typically one-half to one mile away from the project site. The most visible project features would be the powerhouse and 700-foot-long, primarily above-ground penstock. At these distances, the proposed powerhouse and penstock should be relatively inconspicuous from most vantage points and would be partially hidden from view by intervening topography. Gilbert Hydro's proposal to reduce visual effects by designing the powerhouse to be small in size, similar in appearance to other buildings in the area, and finished with a color that blends in with the rural character of the area would help to minimize the aesthetic effects of the project. However, visual effects could be further

minimized by avoiding reflective materials and highly-contrasting colors in the finished appearance of both the penstock and the powerhouse.

Noise produced by the powerhouse may be audible offsite, but is expected to be of a low intensity and should not significantly change ambient noise levels in the area.

3.4 NO-ACTION ALTERNATIVE

Under the no-action alternative, the Gilbert Project would not be constructed. There would be no changes to the physical, biological, recreational, or cultural resources of the area and electrical generation from the project would not occur. The power that would have been developed from a renewable resource would have to be replaced from nonrenewable fuels.

4.0 DEVELOPMENTAL ANALYSIS

In this section, we look at the Gilbert Project's use of the unnamed channel's flow for hydropower purposes to see what effect various environmental measures would have on the project's costs and power generation. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,[17] the Commission compares the current project cost to an estimate of the cost of obtaining the same amount of energy and capacity using the likely alternative source of power for the region (cost of alternative power). In keeping with Commission policy as described in *Mead Corp.*, our economic analysis is based on current electric power cost conditions and does not consider future escalation of fuel prices in valuing the hydropower project's power benefits.

For each of the licensing alternatives, our analysis includes an estimate of: (1) The cost of individual measures considered in the EA for the protection, mitigation and enhancement of environmental resources affected by the project; (2) the cost of alternative power; (3) the total project cost (i.e., for construction, operation, maintenance, and environmental measures); and (4) the difference between the cost of alternative power and total project cost. If the difference between the cost of alternative power and total project cost is positive, the project produces power for less than the cost of alternative power. If the difference between the cost of alternative power and total project cost is negative, the project produces power for more than the cost of alternative power. This estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license. However, project economics is only one of many public interest factors the Commission considers in determining whether, and under what conditions, to issue a license.

4.1 POWER AND DEVELOPMENTAL BENEFITS OF THE PROJECT

Table 2 summarizes the assumptions and economic information we use in our analysis. This information, except as noted, was provided by Gilbert Hydro in its license application and subsequent filings. We find that the values provided by Gilbert Hydro are reasonable for the purposes of our analysis. Cost items common to all alternatives include: taxes and insurance costs; estimated future capital investment required to maintain and extend the life of plant equipment and facilities; licensing costs; and normal operation and maintenance cost.

TABLE 2—PARAMETERS FOR ECONOMIC ANALYSIS OF THE GILBERT PROJECT

[Source: staff and Gilbert Hydro]

Economic parameter	Value
Period of analysis (years)	30
Interest/discount rate (%)	[a] 7.25
Federal tax rate (%)	[b] 35
State tax (%)	[b] 3
Insurance rate ($/year)	[a] $1,000
Average annual generation (MWh)	[a] 550
Energy value ($/MWh)	[c] $30.35
Term of financing (years)	20
Construction cost ($)	[a] $200,000
License application cost ($)	[a] $25,000
Operation and Maintenance, $/year	[a] $2,000

[a] From final license application filed May 30, 2012.
[b] Assumed by staff.
[c] 2013 contract year cost provided by Idaho Power Avoided Cost Rates for Non-Fueled Projects, Errata to Order No. 32697, dated January 2, 2013.

4.2 COMPARISON OF ALTERNATIVES

Table 3 summarizes the installed capacity, annual generation, cost of alternative power, estimated total project cost, and difference between the cost of alternative power and total project cost for each of the action alternatives considered in this EA: the applicant's proposal and the staff alternative.

TABLE 3—SUMMARY OF THE ANNUAL COST OF ALTERNATIVE POWER AND ANNUAL PROJECT COST FOR THE ACTION ALTERNATIVES FOR THE GILBERT PROJECT

[Source: staff]

	Gilbert Hydro's proposal	Staff alternative [a]
Installed capacity (kW)	90	90.
Annual generation (MWh)	550	550.
Annual cost of alternative power	$16,690	$16,690.
	$30.35/MWh	$30.35/MWh.
Annual project cost	$25,090	$25,200.
	$45.62/MWh	$45.83/MWh.
Difference between the cost of alternative power and project cost.	($8,400) [b]	($8,510). [b]
	($15.27/MWh) [b]	($15.48/MWh). [b]

[a] Costs were escalated to 2013 dollars using the Consumer Price Index for Energy Services.
[b] A number in parentheses denotes that the difference between the cost of alternative power and project cost is negative, thus the total project cost is greater than the cost of alternative power.

[17] See *Mead Corporation, Publishing Paper Division*, 72 FERC ¶ 61,027 (July 13, 1995). In most cases, electricity from hydropower would displace some form of fossil-fueled generation, in which fuel cost is the largest component of the cost of electricity production.

4.2.1 No-Action Alternative

Under the no-action alternative, the project would not be constructed as proposed and would not produce any electricity. No costs for construction, operation and maintenance, or proposed environmental protection, mitigation, or enhancement measures would be incurred by the applicant.

4.2.2 Gilbert Hydro's Proposal

Under Gilbert Hydro's proposal, the project would require construction of a drop inlet structure, a penstock, a powerhouse containing generation facilities, a tailrace, and a transmission line. Gilbert Hydro proposes various environmental measures to protect, mitigate, and enhance existing environmental resources in the vicinity of project features.

Under Gilbert Hydro's proposal, the project would have an installed capacity of 90 kW and would generate an average of 550 MWh annually. The average annual cost of alternative power would be $16,690, or about $30.35/MWh. The average annual project cost would be $25,090 or about $45.62/MWh. Overall, the project would produce power at a cost which is $8,400, or $15.27/MWh, more than the cost of alternative power.

4.2.3 Staff Alternative

The staff alternative would have the same capacity and energy attributes as Gilbert Hydro's proposal. Table 4 shows the staff-recommended additions, deletions, and modifications to Gilbert Hydro's proposed environmental protection and enhancement measures, and the estimated cost of each. The cost of alternative power would be the same as the applicant's proposal. The average annual project cost would $25,200, or about $45.83/MWh. Overall, the project would produce power at a cost which is $8,510, or $15.48/MWh, more than the cost of alternative generation

4.3 COST OF ENVIRONMENTAL MEASURES

Table 4 gives the cost of each of the environmental enhancement measures considered in our analysis. We convert all costs to equal annual (levelized) values over a 30-year period of analysis to give a uniform basis for comparing the benefits of a measure to its cost.

TABLE 4—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF CONSTRUCTION AND OPERATION OF THE GILBERT PROJECT

[Source: staff]

Enhancement/Mitigation measures	Entities	Capital (2013$) [a]	Annual (2012$) [a]	Levelized annual cost (2012$) [b]	Notes
1. Implement erosion control measures that are consistent with industry standards.	Gilbert Hydro	$2,565	$0	$190.	
2. As part of the Revegetation Plan, develop and implement a streambank improvement program.	Gilbert Hydro	Unknown	Unknown	Unknown	c
3. As part of the Revegetation Plan, (1) revegetation of areas disturbed during construction with crested wheatgrass in the upland areas and Timothy grass or, if available, deep rooted plants such as sedges and rushes in the wetland areas as soon as possible after construction; and (2) use of certified weed-free seeds and cleaning equipment prior to entry into construction site.	Gilbert Hydro	$2,565	$0	$190.	
4. Same as #3, but replant disturbed wetland areas with native rushes and sedges instead of Timothy grass.	Staff, Idaho DFG	$3,080	$0	$230	f
5. Design and construct the project transmission line in accordance with the most current raptor protection standards recommended by FWS.	Gilbert Hydro	$0	$0	$0	d
6. Consult with FWS for guidelines for transmission line design and construction.	Idaho DFG	$0	$0	$0	d
7. Design and construct the transmission line to APLIC standards in consultation with FWS.	Staff	$0	$0	$0	d
8. Notify the SHPO, Shoshone-Bannock Tribe, and Commission if any archeological artifacts are found and develop protective measures.	Gilbert Hydro, Staff	$0	$0	$0	e
9. Develop an Erosion and Sediment Control Plan.	Staff	$1,025	$0	$70	b
10. Design the powerhouse to be small in size, similar in appearance to other buildings in the area, and finished with a color that blends in with the rural character of the area.	Gilbert Hydro	$0	$0	$0.	

TABLE 4—COST OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF CONSTRUCTION AND OPERATION OF THE GILBERT PROJECT—Continued

[Source: staff]

Enhancement/Mitigation measures	Entities	Capital (2013$) [a]	Annual (2012$) [a]	Levelized annual cost (2012$) [b]	Notes
11. Avoid reflective materials and highly-contrasting colors in the finished appearance of both the penstock and powerhouse.	Staff	$0	$0	$0.	

[a] Costs were provided by Gilbert Hydro unless otherwise noted.
[b] Cost estimated by staff.
[c] The measures that would be implemented were not specified; therefore, Commission staff could not assign a cost for this proposal. While the Commission staff does not object to Gilbert Hydro's proposal to develop and implement the streambank improvement program to enhance downstream resources, staff does not recommend that it be a condition of any license issued for this project.
[d] These costs are included in the overall construction costs of the project.
[e] The implementation of this measure would only happen if archeological artifacts are found; staff's recommendation to notify the SHPO, Shoshone-Bannock Tribe, and the Commission would have no additional cost.
[f] The implementation of this measure would have an incremental cost of $515 (and an incremental levelized annual cost of $40) over the applicant's proposed Revegetation Plan to account for the difference in cost between Timothy grass seed and Idaho DFG and staff's recommended native rushes and sedges.

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 COMPARISON OF ALTERNATIVES

In this section, we compare the developmental and non-developmental effects of Gilbert Hydro's proposal, Gilbert Hydro's proposal as modified by staff, and the no-action alternative.

We estimate the annual generation of the project under the two action alternatives identified above would be the same.

We summarize the environmental effects of the different alternatives in Table 5.

TABLE 5—COMPARISON OF ALTERNATIVES FOR THE GILBERT HYDROELECTRIC PROJECT

[Source: staff]

Resource	No action alternative	Proposed action	Staff alternative
Geology and Soils	No changes to geology and soils.	Temporary erosion during vegetation clearing and excavation for construction; however, soil erosion would be minimized through proposed industry-standard erosion control measures.	Same as Proposed Action, except development of a site-specific Erosion and Sediment Control Plan would ensure soil erosion and sedimentation would be minimized.
Aquatic Resources	No changes to aquatic resources.	Run-of-river operation would maintain aquatic habitat below the proposed powerhouse and minimize adverse effects on water quality. Erosion, sedimentation, and turbidity of project waters may occur during construction; however, these would be minimized through proposed industry-standard erosion control measures. Proposed streambank improvement program could enhance aquatic habitat downstream of the powerhouse.	Same as Proposed Action, except a site-specific Erosion and Sediment Control Plan would ensure minimal erosion, sedimentation, and turbidity. No streambank stabilization downstream of the project would occur.
Terrestrial Resources	No changes to terrestrial resources.	Minor increased potential for raptor collision and electrocution with transmission line. Temporary disturbance of 0.5 acre vegetation and permanent loss of 0.1 acre. Disturbed vegetation would be restored and the livestock and wildlife forage and wildlife habitat would be replaced. Noxious weed establishment would be minimized.	Same as Proposed Action, except disturbed wetlands would be revegetated with native sedges and rushes instead of Timothy grass, enhancing vegetation, forage for livestock and wildlife, and wildlife habitat.
Cultural Resources	No changes to cultural resources.	No effects on identified cultural resources. If previously unidentified cultural resources or human remains are discovered, resources would likely be protected.	Same as Proposed Action except, if archeological or historic properties are discovered, Commission notification and protection measures developed in consultation with Idaho SHPO and Shoshone-Bannock, would provide greater assurance of resource protection.

TABLE 5—COMPARISON OF ALTERNATIVES FOR THE GILBERT HYDROELECTRIC PROJECT—Continued

[Source: staff]

Resource	No action alternative	Proposed action	Staff alternative
Aesthetic Resources ...	No changes to aesthetic resources.	Potential minor visual effects on surrounding properties.	Same as Proposed Action, except minor effects would be reduced by avoiding reflective materials and high-contrast colors in the finished appearance of facilities.

5.2 COMPREHENSIVE DEVELOPMENT AND RECOMMENDED ALTERNATIVE

Sections 4(e) and 10(a)(1) of the FPA require the Commission to give equal consideration to the power development purposes and to the purpose of energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. This section contains the basis for, and a summary of, our recommendations for licensing the Gilbert Hydroelectric Project. We weigh the costs and benefits of our recommended alternative against other proposed measures.

Based on our independent review of agency and public comments filed on this project and our review of the environmental and economic effects of the proposed project and its alternatives, we selected the staff alternative as the preferred alternative. This alternative includes elements of the applicant's proposal, resource agency recommendations, and some additional measures. We recommend this alternative because: (1) Issuance of an original hydropower license by the Commission would allow Gilbert Hydro to build and operate the project as a beneficial and dependable source of electrical energy; (2) the 90 kW of electric capacity available comes from a renewable resource that does not contribute to atmospheric pollution; (3) the public benefits of this alternative would exceed those of the no-action alternative; and (4) the recommended measures would protect and enhance environmental resources affected by constructing, operating, and maintaining the project.

In the following section, we make recommendations as to which environmental measures proposed by Gilbert Hydro or recommended by agencies or other entities should be included in any original license issued for the project. In addition to Gilbert Hydro's proposed environmental measures, we recommend additional environmental measures to be included in any license issued for the project, as described in section 5.2.2 below.

5.2.1 Measures Proposed by Gilbert Hydro

Based on our environmental analysis of Gilbert Hydro's proposal in section 3, and the costs presented in section 4, we conclude that the following environmental measures proposed by Gilbert Hydro would protect and enhance environmental resources and would be worth the cost. Therefore, we recommend including these measures in any license issued for the project.

Operation and Design Features

- Operate in a run-of-river mode to maintain natural flows downstream of the project for the protection of aquatic resources;
- Design and construct the project transmission line in accordance with the most current raptor protection standards recommended by the FWS;
- Design the powerhouse to be small in size, similar in appearance to other buildings in the area, and finished with a color that blends in with the rural character of the area.

During Construction

- Implement industry-standard erosion control measures to minimize erosion and sedimentation;
- Stop construction immediately in the event of an inadvertent discovery of cultural resources or human remains, and contact the Idaho SHPO and the Shoshone-Bannock Tribes for guidance before continuing project construction or other project-related activity.

During Project Operation

- Implement the portions of the Revegetation Plan that include: (1) revegetation of areas disturbed during construction with crested wheatgrass in the upland areas; and (2) use of certified weed-free seeds and cleaning of all equipment prior to entry into construction site.

5.2.2 *Modifications and Additional Measures Recommended by Staff*

We recommend the measures described above, and the following modifications and additional staff-recommended measures:

- An Erosion and Sediment Control Plan that includes site-specific measures;
- Modification of the Revegetation Plan to include the use of native sedges and rushes during replanting of disturbed wetland areas, instead of Timothy grass as proposed;
- Developing the final transmission line design, in consultation with the FWS, to adhere to the most current APLIC standards;
- Notify the Commission, in addition to the Idaho SPHO and Shoshone-Bannock Tribes as proposed, and develop measures in consultation with the Idaho SHPO and the Shoshone-Bannock Tribes if previously unidentified archeological or historic properties are discovered; and
- In addition to finishing the powerhouse in a color that blends in with the rural character of the area, avoid reflective materials and highly-contrasting colors in the finished appearance of both the penstock and powerhouse to reduce their visibility from surrounding properties and public roads.

Below, we discuss the basis for our staff-recommended modifications and additional measures.

Erosion and Sediment Control Plan

Gilbert Hydro proposes to minimize the potential for erosion and sedimentation from project construction by implementing unspecified erosion control measures that it states would be consistent with industry standards. While the proposed measures could potentially minimize soil erosion in the project area, Gilbert Hydro's proposal lacks detail on the measures that would be implemented to ensure its effectiveness and adequately provide for Commission oversight and enforcement of the measures. For these reasons, we recommend that Gilbert Hydro prepare and file, after consultation with Idaho DFG and Idaho DEQ, a site-specific

Erosion and Sediment Control Plan that specifies the measures that would implemented during project construction. We envision the plan would include, but not necessarily be limited to, a description of the measures for protecting existing vegetation, grading slopes, controlling surface drainage, containing sediment, stockpiling topsoil, storing and disposing excess soil and debris, and clearing and constructing the transmission line rights-of-way. We estimate that the levelized annual cost to develop the plan would be $70, and conclude that the benefits of the plan would justify the additional cost.

Revegetation Plan

Gilbert Hydro proposes to implement a Revegetation Plan that includes, in part, provisions to reseed and replant areas disturbed by project construction. The seeds would be certified weed-free. Gilbert Hydro proposes to reseed the upland areas with crested wheatgrass and the wetland areas with Timothy grass, or, if available, deep-rooted plants such as sedges or rushes. Idaho DFG recommends that Gilbert Hydro replant wetland areas with native sedges and rushes instead of Timothy grass, and offered to help locate sources of native plants. Reseeding and replanting wetland areas using native sedges and rushes instead of Timothy grass would promote and enhance native vegetation, livestock and wildlife forage, and wildlife habitat. We estimate that the additional levelized annual cost to replant disturbed wetlands with native sedges and rushes would be $40, and conclude that the benefits of this measure would justify the additional cost.

Transmission Line Design and Construction

Gilbert Hydro proposes to design the project transmission line in accordance with the most current raptor protection standards recommended by FWS. Idaho DFG recommends that Gilbert Hydro consult with FWS on the design of appropriate raptor protection measures for the project transmission line. While Gilbert Hydro's proposal could protect raptors in the project area, the plan lacks detail on the standards that would be implemented and any mechanism to consult with the FWS prior to final design and construction of the transmission line. Therefore, we recommend an additional requirement that Gilbert Hydro design the transmission line, in consultation with the FWS, to adhere to APLIC standards. This would ensure that the transmission line would be protective of raptors on the project area. We estimate that there would be no cost for the additional requirement and conclude that the benefits of ensuring raptor protection would be justified.

Cultural Resources

As part of Gilbert Hydro's license application, Gilbert Hydro included letters from the Idaho SHPO and the Shoshone-Bannock Tribes that reached the same conclusion that no historic properties would be affected by the proposed project. Although no cultural resources or historic properties have been identified within the project boundary, it is possible that previously unidentified archeological or historic properties could be discovered during construction, operation, or maintenance of project facilities. To ensure protection of cultural resources and provide guidance on measures to be implemented if cultural resources are discovered during the term of any license issued for the project, we recommend that Gilbert Hydro also notify the Commission and develop measures in consultation with the Idaho SHPO and Shoshone-Bannock Tribes. We estimate that there would be no cost for this additional measure and find the benefits of this measure would be in the public interest.

Aesthetic Resources

To reduce potential effects on aesthetic resources, including the visibility of project facilities from surrounding properties, Gilbert Hydro proposes to design the powerhouse to be small in size, similar in appearance to other buildings in the area, and finished with a color that blends in with the rural character of the area. To minimize visual effects on neighboring residences, we recommend that reflective materials and highly-contrasting colors be avoided in the finished appearance of both the penstock and the powerhouse. We estimate that there would be no cost to implement this measure and conclude that the aesthetic benefits would be justified.

5.2.3 Measures Not Recommended

Some of the measures proposed by Gilbert Hydro and recommended by Idaho DFG would not contribute to the best comprehensive use of project water resources, do not exhibit sufficient nexus to the project environmental effects, or would not result in benefits to non-power resources that would be worth their cost. The following discusses the basis for staff's conclusion not to recommend such measures.

Streambank Improvement Program

As part of its Revegetation Plan, Gilbert Hydro proposes to work with federal and state agencies to develop a streambank improvement program along the existing stream channel downstream of the powerhouse. Gilbert Hydro stipulates that it would not provide funding for the proposed program and that it would need to approve any program elements that could potentially adversely affect agricultural use of its land. Idaho DFG indicated in its comments on the license application that it would work with Gilbert Hydro and other agencies to identify sources of funding for the program.

While the proposed program could potentially enhance aquatic and riparian habitat downstream of the powerhouse, we do not recommend including a provision in the license for the proposed program. The area in which the program would be implemented is located downstream of the project area and outside of the project boundary. Furthermore, the run-of-river operation would ensure that there would be no project-related effects on downstream aquatic and riparian resources. This measure does not have a sufficient nexus to project effects. For these reasons, we do not recommend the proposed program be included as a license requirement.[18]

5.2.4 Other Issues

Water Rights

Idaho DFG recommends that Gilbert Hydro acquire a water right equal to the amount of water that will be diverted by the project. Commission licenses include a standard article requiring licensees to acquire all rights necessary for operation and maintenance of the project; therefore, there is no need for and we do not recommend an additional license condition specifically requiring Gilbert Hydro to acquire a water right for water diverted by the project.

5.3 UNAVOIDABLE ADVERSE EFFECTS

Construction and operation of the proposed project would result in temporary increases in erosion and sedimentation of project lands and waters, temporary increases in water turbidity during construction of project facilities and initial project operation, permanent increased potential for raptor collision and electrocution as a result of the new transmission line, temporary

[18] We have no objection to Gilbert Hydro entering into a cooperative agreement with the State of Idaho or another party to implement the streambank improvement program outside of the requirements of any license that may be issued for the project.

and permanent vegetation loss, and minor visual effects on surrounding properties.

5.4 FISH AND WILDLIFE AGENCY RECOMMENDATIONS

Under the provisions of section 10(j) of the FPA, each hydroelectric license issued by the Commission shall include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, or enhancement of fish and wildlife resources affected by the project.

Section 10(j) of the FPA states that whenever the Commission believes that any fish and wildlife agency recommendation is inconsistent with the purposes and the requirements of the FPA or other applicable law, the Commission and the agency shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency. In response to our REA notice, Idaho DFG submitted recommendations for the project on December 13, 2012. Table 6 lists the state recommendations filed subject to section 10(j), and indicates whether the recommendations are adopted under the staff alternative. Environmental recommendations that we consider outside the scope of section 10(j) have been considered under section 10(a) of the FPA and are addressed in the specific resource sections of this document and the previous section.

We determined one recommendation, to revegetate wetland areas using native sedges and rushes instead of Timothy grass, to be within the scope of section 10(j) and recommend this measure. We also recommend that the provision for Gilbert Hydro consult with FWS on the design of project transmission line. Table 6 indicates the basis for our preliminary determinations concerning measures that we consider inconsistent with section 10(j).

TABLE 6—FISH AND WILDLIFE AGENCY RECOMMENDATIONS FOR THE GILBERT PROJECT

[Source: staff]

Recommendation	Agency	Within scope of Section 10(j)	Annualized cost	Adopted?
Revegetate wetland areas using native sedges and rushes instead of Timothy grass.	Idaho DFG ..	Yes	$230	Yes.
Consult with FWS on the design of appropriate raptor protection measures for the project transmission line.	Idaho DFG ..	No, consulting with the FWS is not a specific fish and wildlife measure.	$0	Yes.
Acquire a water right equal to the amount of water that will be diverted by the project.	Idaho DFG ..	No, acquiring water rights is not a specific fish and wildlife measure.	Unknown	No, however, Commission licenses include a standard article requiring licensees to acquire all rights necessary for operation and maintenance of a project.

5.5 CONSISTENCY WITH COMPREHENSIVE PLANS

Section 10(a)(2) of the FPA, 16 U.S.C., section 803(a)(2)(A), requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by a project. We reviewed five comprehensive plans that are applicable to the Gilbert Hydroelectric Project.[19] No inconsistencies were found.

[19] (1) Idaho Department of Fish and Game. 2001. Fisheries management plan, 2007–2012. Boise, Idaho; (2) Idaho Department of Fish and Game. Bonneville Power Administration. 1986. Pacific Northwest rivers study. Final report: Idaho. Boise, Idaho. 12 pp; (3) Idaho Department of Fish and Game. Idaho Comprehensive Wildlife Conservation Strategy. Boise, Idaho. September, 2005; (4) Idaho Department of Health and Welfare. 1992. Idaho water quality standards and wastewater treatment requirements. Boise, Idaho. January 1992; and (5) Idaho Water Resource Board. 2012. State water plan. Boise, Idaho. November 2012.

6.0 FINDING OF NO SIGNICANT IMPACT

Issuing an original minor license for the Gilbert Hydroelectric Project, with our recommended measures, would provide a source of renewable power. Our recommended measures would protect cultural resources and reduce minor aesthetic effects. Project construction and operation would result in some minor erosion, sedimentation, and turbidity during project construction and initial operation; may create minor long-term effects to aesthetics; and may create temporary noise impacts from construction. Project construction and operation would also increase the potential for raptor collision and electrocution from the new transmission line and would result in minor temporary and permanent vegetation loss.

On the basis of our independent analysis, we find that the issuance of an original license for the proposed Gilbert Hydroelectric Project, with our recommended environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EF13–7–000, EF13–8–000, EF13–9–000, EF13–10–000, EF13–11–000, EF13–12–000, EF13–13–000, EF13–14–000]

United States Department of Energy, Bonneville Power Administration: Notice of Filing

Take notice that on July 29, 2013, as supplemented on August 1, 2013, and August 14, 2013, the Bonneville Power Administration submitted its Proposed 2014 Wholesale Power and Transmission Rates Rate Adjustment, for confirmation and approval, to be effective October 1, 2013, through September 30, 2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211,-385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 28, 2013.

Dated: August 15, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–20459 Filed 8–21–13; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0662; FRL–9535–5]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Gasoline Distribution Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Gasoline Distribution Facilities (40 CFR Part 63, Subpart R) (Renewal)" (EPA ICR No. 1659.08, OMB Control No. 2060–0325), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently approved through September 30, 2013. Public comments were previously requested via the **Federal Register** (77 *FR* 63813) on October 17, 2012, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 23, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0662, to: (1) EPA online, using *www.regulations.gov* (our preferred method), by email to: *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the

Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart R.

Owners or operators of the affected facilities must submit initial notification reports, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Form Numbers: None.

Respondents/affected entities: Owners or operators of gasoline distribution facilities that transfer and store gasoline, including pipeline breakout stations and bulk terminals.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart R).

Estimated number of respondents: 492 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 15,823 hours (per year). "Burden" is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,904,020 (per year), includes $357,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the respondent burden in this ICR compared to the previous ICR. The increase occurred due to an increase in the total estimated number of area sources, 25 percent of which are within the 50 percent major source threshold criteria and are affected by this standard. This ICR uses updated estimates to more accurately reflect the respondent universe, and to be consistent with EPA ICR Number 2237.03. This ICR also uses updated labor rates from the Bureau of Labor Statistics to calculate burden costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–20457 Filed 8–21–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0745; FRL 9535–3]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Reformulated Gasoline Commingling Provisions (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Reformulated Gasoline Commingling Provisions (Renewal) (EPA ICR No. 2228.04, OMB Control No. 2060–0587), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through August 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 20102) on April 3, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 23, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2006–0745, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Fuel Compliance Center, 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9017 fax number: 202–566–1744 email address: *heard.geanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, William Jefferson Clinton Federal Building West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA would like to continue collecting notifications from gasoline retailers and wholesale purchaser-consumer related to commingling of ethanol blended and non-ethanol blended reformulated gasoline. The test results will allow EPA to monitor compliance with the Reformulated Gasoline Commingling Provisions. We inform respondents that they may assert claims of business confidentiality (CBI) for information they submit in accordance with 40 CFR part 2.203.

Form Numbers: None.

Respondents/affected entities: Gasoline stations, Gasoline stations with convenience stores, Gasoline stations without convenience stores.

Respondent's obligation to respond: Mandatory under the Clean Air Act (CAA), 42 U.S.C. §§ 7414 and 7542.

Estimated number of respondents: 43,050.

Frequency of response: Annually.

Total estimated burden: 21,013 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $357,221 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: The change in burden from the prior ICR is due in part to better numbers extracted from business and industry economic statistics that assisted in calculating the numbers of respondents. These better numbers reduced the party size by 13,650 members. The number of responses also declined from 110,700 to 84,050 a difference of 26,650 reports, which reduced the industry burden hours from 27,675 to 21,013. We also found that the original cost per response was overstated by a factor of 2. With the decline of respondents, burden hours and responses, and revision of the cost per response, the cost associated with this ICR is $357,221, a difference of

$528,379, calculated from the prior collection approved by OMB.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–20458 Filed 8–21–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2009–0921; FRL–9810–4]

Final Aquatic Life Ambient Water Quality Criteria For Ammonia—Freshwater 2013

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final criteria.

SUMMARY: Pursuant to section 304(a) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) is announcing the availability of final national recommended ambient water quality criteria for the protection of aquatic life from effects of ammonia in freshwater (EPA 822–R–13–001). The final criteria incorporate the latest scientific knowledge on the toxicity of ammonia to freshwater aquatic life. On December 30, 2009, EPA published draft national recommended water quality criteria for ammonia and provided the public an opportunity to provide scientific views. Aquatic life criteria are developed based on EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses (1985), (EPA/R–85–100).* EPA's recommended section 304(a) water quality criteria provide guidance to States and authorized Tribes in adopting water quality standards for protecting aquatic life and human health. EPA's recommended water quality criteria by themselves have no binding legal effect. These national recommended criteria for ammonia in freshwater are intended to protect aquatic life and do not address human health toxicity data. The water quality criteria for ammonia for the protection of saltwater organisms are not being updated at this time. EPA's national recommended final acute ambient water quality criteria (AWQC) for protecting freshwater organisms from potential effects of ammonia is 17 mg/L total ammonia nitrogen (TAN) and the final chronic AWQC for ammonia is 1.9 mg/L TAN at pH 7.0 and temperature 20 °C.

ADDRESSES: Scientific views received from the public on the draft ammonia criteria documents are available from the EPA Docket Center and are identified by Docket ID No. EPA–HQ–OW–2009–0921. They may be accessed online at:

- *www.regulations.gov:* Follow the on-line instructions.
- *Email: OW-Docket@epa.gov.*
- *Mail:* US Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 2822T; 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *On Site:* EPA Docket Center, 1301 Constitution Ave. NW., EPA West, Room 3334, Washington, DC. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., EST, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water is (202) 566–2426.

For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Lisa Huff, Health and Ecological Criteria Division (4304T), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; (202) 566–0787; *huff.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What are water quality criteria?

Water quality criteria are either narrative descriptions of water quality or scientifically derived numeric values that protect aquatic life or human health from the deleterious effects of pollutants in ambient water.

Section 304(a)(1) of the Clean Water Act (CWA) requires EPA to develop and publish and, from time to time, revise, criteria for protection of water quality and human health that accurately reflect the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting pollutant concentrations in ambient water.

Section 304(a) criteria provide guidance to States and authorized Tribes in adopting water quality standards that ultimately provide a basis for assessing water body health and controlling discharges or releases of pollutants. Under the CWA and its implementing regulations, States and authorized Tribes are to adopt water quality criteria to protect designated uses (e.g., public water supply, aquatic life, recreational use, or industrial use). EPA's recommended water quality criteria do not substitute for the CWA or regulations, nor are they regulations themselves. Thus, EPA's recommended criteria do not impose legally binding requirements. States and authorized Tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality criteria that differ from these recommendations.

II. What is ammonia and why is EPA concerned about it?

Ammonia is a constituent of nitrogen pollution. Unlike other forms of nitrogen, which can cause eutrophication of a water body at elevated concentrations, the primary concern with ammonia is its direct toxic effects on aquatic life, which are exacerbated by elevated pH and temperature. Ammonia is considered one of the most important pollutants in the aquatic environment not only because of its highly toxic nature and occurrence in surface water systems, but also because many effluents have to be treated in order to keep the concentrations of ammonia in surface waters from being unacceptably high. Ammonia can enter the aquatic environment via direct means such as municipal effluent discharges and the excretion of nitrogenous wastes from animals, and indirect means such as nitrogen fixation, air deposition, and runoff from agricultural lands.

III. What are the 2013 ammonia criteria recommendations?

EPA is today publishing final national recommended ambient water quality criteria for protecting freshwater aquatic life for ammonia. These final criteria updates are based on EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (1985), (EPA/R–85–100). These Guidelines describe the Agency's current approach for deriving national recommended water quality criteria to protect aquatic life. The latest toxicity data and other information on the effects of ammonia on freshwater aquatic life were obtained from reliable sources and subjected to both internal and external scientific peer review. The national recommended water quality criteria for ammonia in saltwater are not being updated at this time.

The available data for ammonia, evaluated in accordance with EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (1985), indicate that freshwater aquatic animals would have

an appropriate level of protection if the following are attained:

Freshwater: Freshwater aquatic organisms and their uses should not be affected unacceptably if—

1. The one-hour average concentration of total ammonia nitrogen (in mg TAN/L) does not exceed, more than once every three years on the average, the criterion maximum concentration (i.e., the "CMC," or "acute criterion").

2A. The thirty-day average concentration of total ammonia nitrogen (in mg TAN/L) does not exceed, more than once every three years on the average, the criterion continuous concentration (i.e., the "CCC," or "chronic criterion").

2B. In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the CCC, more than once every three years on the average.

The acute and chronic criteria concentrations are expressed as functions of temperature and pH, such that values differ across sites, and differ over time within a site. The criteria document describes the relationship between ammonia and these water quality factors and provides tables showing how the criteria value changes with varying pH and temperatures. As temperature decreases, freshwater invertebrates, but not fish, become less sensitive to ammonia, and below a particular temperature threshold (i.e., 15.7 °C for the CMC and 7 °C for the CCC), fish become more sensitive than invertebrates.

Acute Criteria: At pH 7, the CMC ranges from 7.3 mg TAN/L at 30 °C to 24 mg TAN/L at 0 °C.

Chronic Criteria: At pH 7, the CCC ranges from 0.99 mg TAN/L at 30 °C to 4.4 mg TAN/L at 0 °C.

2013 Final ALC Criteria for Ammonia

(Magnitude, Frequency, and Duration)	(mg TAN/L) pH 7.0, T=20 °C
Acute (1-hour average)	17
Chronic (30-day rolling average)	*1.9

*Not to exceed 2.5 times the CCC as a 4-day average within the 30-days, i.e. 4.8 mg TAN/L at pH 7 and 20 °C more than once in 3 years on average.

Criteria frequency: Not to be exceeded more than once in 3 years on average.

Note: These criteria values are appropriate at the standard normalized pH and temperature of pH 7.0, a temperature of 20 °C; ammonia criteria are a function pH and temperature.

IV. What new data have been included in the 2013 ammonia criteria recommendations?

Since the publication of the 1999 Update of Ambient Water Quality Criteria for Ammonia (EPA–822–R–99–014), numerous new scientific studies were published indicating that freshwater mussels are more sensitive to ammonia than the organisms represented in the 1999 criteria dataset, and that snails, another freshwater mollusk group, are also sensitive to ammonia. EPA evaluated the new toxicity data per EPA's 1985 Guidelines for deriving aquatic life criteria (Stephan et al., 1985) and incorporated the acceptable data in calculating the final criteria for ammonia. The final recommended acute and chronic criteria for ammonia presented in this document are protective of the aquatic community, including freshwater mollusks.

V. What is the relationship between the ammonia criteria recommendations and state or tribal water quality criteria?

Water quality standards consist of three principal elements: Designated uses, water quality criteria to protect those uses, and antidegradation requirements, providing for protection of existing water uses and limitations on degradation of high quality waters. As part of the water quality standards triennial review process defined in Section 303(c)(1) of the CWA, the States and authorized Tribes are responsible for developing, maintaining and revising water quality standards. Section 303(c)(1) requires States and authorized Tribes to review and modify, if appropriate, their water quality standards at least once every three years.

States and authorized Tribes must adopt water quality criteria into their water quality standards that protect designated uses. States may develop their criteria based on EPA's recommended section 304(a) water quality criteria or other scientifically defensible methods. A state's criteria must contain sufficient parameters or constituents to protect the designated uses. Consistent with 40 CFR 131.21, new or revised water quality criteria adopted into law by States and authorized Tribes on or after May 30, 2000 are in effect for CWA purposes only after EPA approval.

States and authorized Tribes may also develop site-specific criteria for particular waterbodies as appropriate, following EPA procedures described in the *Guidelines for Deriving Numerical Aquatic Site-Specific Water Quality Criteria by Modifying National Criteria* (USEPA, 1984f). A site-specific criterion is intended to come closer than the national criterion to providing the intended level of protection to the aquatic life at that particular site, usually by taking into account the biological and/or chemical conditions (i.e., the species composition and/or water quality characteristics) at that site. If data in the national criterion document and/or from other sources indicated that the site's resident species range of sensitivity is *different* from that for the species in the national criterion document, States and authorized Tribes can develop site-specific criteria following the *Revised Deletion Process for the Site-Specific Recalculation Procedure for Aquatic Life Criteria* (EPA 823–R–13–001). For example, if freshwater mussel species are not resident at a site, the *Revised Deletion Process for the Site-Specific Recalculation Procedure for Aquatic Life Criteria* might be used to recalculate the criteria without these species.

VI. Where can I find more information about water quality criteria and water quality standards?

The EPA has developed supporting documents to aid states considering adoption of the 2013 recommended ammonia criteria. *Flexibilities for States Applying EPA's Ammonia Criteria Recommendations* (EPA 800–F–13–001) provides an overview of a number of flexibilities available for state consideration, including the *Revised Deletion Process for the Site-Specific Recalculation Procedure for Aquatic Life Criteria* mentioned above, variances, revisions to designated uses, dilution allowances, and compliance schedules. The document describes how each of these flexibilities fits within a state's water quality standards adoption and implementation process.

For more information about water quality criteria and water quality standards refer to the following: *Water Quality Standards Handbook* (EPA 823–B94–005a); *Advanced Notice of Proposed Rule Making (ANPRM),* (63FR36742); *Water Quality Criteria and Standards Plan—Priorities for the Future* (EPA 822–R–98–003); *Guidelines and Methodologies Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents* (45FR79347); *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000), EPA–822–B–00–004); *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of*

Aquatic Organisms and Their Uses (EPA 822/R–85–100); *National Strategy for the Development of Regional Nutrient Criteria* (EPA 822–R–98–002); and *EPA Review and Approval of State and Tribal Water Quality Standards* (65FR24641).

• You can find these publications through EPA's National Service Center for Environmental Publications (NSCEP, previously NCEPI) or on the Office of Science and Technology's Home-page (*http://www.epa.gov/waterscience*).

Dated: April 30, 2013.

Nancy K. Stoner,

Acting Assistant Administrator, Office of Water.

[FR Doc. 2013–20307 Filed 8–21–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collections described below.

DATES: Comments must be submitted on or before October 21, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collections of information:

1. Title: Interagency Guidance on Asset Securitization.
OMB Number: 3064–0137.
Form Number: None.
Frequency of Response: On occasion.
Affected Public: Insured State Nonmember Banks.
Estimated Number of Respondents: 22.
Estimated Time per Response: 7.5 hours.
Total estimated annual burden: 164 hours.
General Description of Collection: The Interagency Guidance on Asset Securitization Activities informs bankers and examiners of safe and sound practices regarding asset securitization. The information collections contained in the Interagency Guidance are needed by institutions to manage their asset securitization activities in a safe and sound manner. Bank managements use this information as the basis for the safe and sound operation of their asset securitization activities and to ensure that they minimize operational risk in these activities.

2. OMB Number: 3064–0148.
Form Number: None.
Frequency of Response: Annual.
Affected Public: Insured State Nonmember Banks.
Estimated Number of Respondents: 6
Estimated Time per Response: 25 hours.
Total estimated annual burden: 150 hours.
General Description of Collection: The Interagency Statement on Sound Practices Concerning Complex Structured Finance Transactions describes the types of internal controls and risk management procedures that the Agencies believe are particularly effective in assisting financial institutions to identify and address the reputational, legal, and other risks associated with complex structured finance transactions.

3. Title: Reverse Mortgage Products Guidance.
OMB Number: 3064–0176.
Form Number: None.
Frequency of Response: Annual.
Affected Public: Insured State Nonmember Banks.
Estimated Number of Respondents: 48.
Estimated Time per Response: 8 hours.
Total estimated annual burden: 384 hours.
General Description of Collection: The guidance sets forth standards intended to ensure that insured depository institutions effectively assess and manage the compliance and reputation risks associated with reverse mortgage products.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 19th day of August 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–20486 Filed 8–21–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 6, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Krista B. Ryan, individually and as trustee of the KBR 2008 Irrevocable Trust,* Byron, Minnesota; to acquire voting shares of Olmsted Bancorporation, Inc., and thereby indirectly acquire voting shares of First Security Bank, both in Byron, Minnesota.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Richard John Forrest, Sr., individually, and as Trustee of the Richard J. Forrest, Sr. and Betty J. Forrest Revocable Trust, and as Trustee of the Forrest Tire Company, Inc., Profit Sharing Plan; Betty J. Forrest, individually and as Trustee of the Richard J. Forrest, Sr. and Betty J. Forrest Revocable Trust; Robert Hudnall Forrest, Sr., individually, and as Trustee of the Robert H. Forrest, Sr. and Barbara J. Forrest Revocable Trust and as Trustee of the Forrest Tire Company, Inc., Profit Sharing Plan; Barbara J. Forrest, individually and as Trustee of the Robert H. Forrest, Sr. and Barbara J. Forrest Revocable Trust; Robert Hudnall Forrest, Jr., individually and as Trustee of the Forrest Tire Company, Inc., Profit Sharing Plan; Brenda Elaine Forrest, individually; Richard John Forrest, Jr., as Trustee of the Forrest Tire Company, Inc., Profit Sharing Plan; the Forrest Tire Company, Inc., Profit Sharing Plan, all of Carlsbad, New Mexico, and Michael Dale Forrest, individually and JoAnn Forrest, individually,* both of Odessa, Texas; all together as a group acting in concert, to acquire voting shares of Carlsbad Bancorporation, Inc., and thereby indirectly acquire voting shares of Carlsbad National Bank, both in Carlsbad, New Mexico.

Board of Governors of the Federal Reserve System, August 19, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–20487 Filed 8–21–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Announcement of Requirements and Registration for "Healthy Young America Video Contest"

AGENCY: Office of the Secretary, Assistant Secretary for Public Affairs, HHS.

ACTION: Notice.

SUMMARY: In an effort to enroll the maximum number of uninsured young Americans into individual health plans in the upcoming open enrollment period, multiple mediums and methods of reaching the uninsured population are necessary. HHS and Young Invincibles are co-sponsoring the "Healthy Young America" Video Contest with two primary goals: First, directly reaching the uninsured population through video views and votes; and second, the production of high-quality videos that can be further promoted to the target population.

DATES: The Contest is open from 10 a.m. Eastern Daylight Time ("EDT") on August 19, 2013 through 11:59 p.m. EDT on September 23, 2013.

FOR FURTHER INFORMATION CONTACT: Erin Seidler, 202–690–6453; Jason Young, 202–690–5852.

SUPPLEMENTARY INFORMATION: The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

Subject of Challenge Competition: This Fall, many young Americans will have more health insurance options available to them than ever before. The Affordable Care Act (ACA) will help more individuals enroll in private health insurance plans. *Young Invincibles* and the U.S. Department of Health & Human Services have created a competition that will tap into the creativity and energy of young Americans while raising awareness about the new law and encouraging young people to take advantage of the benefits of health insurance.

Eligibility Rules for Participating in the Competition

The Challenge is open to any Contestant, defined as an individual or team of U.S. citizens or permanent residents of the United States who are 13 years of age or older (with the permission of a parent/guardian if under 18 years of age). Contestants may submit more than one entry if they have developed more than one video.

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the Official Rules for the challenge, available at the Web site described below;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment. Federal employees seeking to participate in this challenge outside the scope of their employment should consult their ethics official prior to developing their submission.

(5) May not be employees of HHS/ASPA or Young Invincibles, judges of the Challenge, or any other party involved with the design, production, execution, or distribution of the Challenge or their immediate family (spouse, parents or step-parents, siblings and step-siblings, and children and step-children).

(6) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

By participating in this Challenge, Contestants agree to the Warranty, Indemnification and Limitations of Liability provided for in the Official Rules.

First Contest: Invincibility Theme

The first contest will focus around the theme of the invincibility myth and young people. It will be focused on demonstrating why *all* young people need health insurance and how it's useful for active and healthy people. The two primary hooks for launch

videos will be sports and pranks gone wrong.

Second Contest: Music & Culture Theme

The second contest will focus on the benefits of health insurance broadly. Video submissions will be focused around music. They can be original songs, autotuned videos, covers of popular songs, music videos, or other such similar styles. Primary hook videos will be around similar themes.

Third Contest: Animation

The third contest will be educational-styled videos focused on using motion graphics, infographics, and Active Type to make heavily stylized videos about facts related to the Affordable Care Act and open enrollment.

The Contest is open from 10 a.m. Eastern Daylight Time ("EDT") on August 19, 2013 through 11:59 p.m. EDT on September 23, 2013.

Video Requirements

The purpose of this Contest is to raise awareness of the Patient Protection and Affordable Care Act, specifically as it relates to Americans aged 18 through 34. Videos should promote that general purpose, as well as be consistent with the criteria of the category in which they are submitted.

In addition, Videos:

- Must meet the category's stated time criteria, must not exceed 100MB max file size, and must be in MP4 or .MOV formats;
- Must be the Creator's own work product, and may not contain any third party material unless the Entrant has obtained all necessary rights to use that material;
- Must not be unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, or contain explicit or graphic descriptions or accounts of sexual acts, or otherwise contain any other content that Sponsors deem to be objectionable;
- Must not victimize, harass, degrade, or intimidate an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- Must not contain an advertisement, solicitation, or other commercial content;
- Must meet all terms of these Official Rules;
- Must not have been previously entered into any other video contest, regardless of previous contest outcome, or published in any medium.

Registration Process for Participants

Entries must be submitted through the Contest Site at *www.healthyyoungamerica.org*. Interested persons should read the Official Rules posted on the Challenge site, *www.healthyyoungamerica.org*. All information in the entry form must be completed.

Prize: There will be four types of prizes awarded in the Contest: (1) Early Bird Rewards, (2) an Early Bird Prize, (3) Finalist Prizes, and (4) the Grand Prize. Cash prizes will be paid by check, made out to the Entrant of record. The odds of winning will depend on the number of entries received.

(1) Early Bird Rewards

The Early Bird Rewards will be awarded to the first 100 Entrants.

(2) Early Bird Prize

In addition, the Judges will select one Early Bird Prize winner from among those submitting valid entries by 11:59PM EDT on September 2, 2013. The Early Bird prize is $1,500.

(3) The Finalist Prizes

The first place Finalist Prize in each category is $3000. Second and third place Finalist Prizes are $2500 each.

(4) Grand Prize

The Grand Prize is an additional $2000. In addition, the Grand Prize winner will be invited to the announcement event in October at a location to be decided.

Basis Upon Which Winner Will Be Selected

The judging panel will make selections based upon the following criteria:

You Are Not Invincible (30–60 seconds)

Videos in this category should convey the need for young people (ages 18–35) to have health insurance and must feature or touch upon the idea that young people are not invincible. Evaluated on creativity, originality, production value, and use of humor.

Perform a Song (30–90 seconds)

Express the necessity for young people to have health insurance in a fun and memorable way through music. Evaluated on creativity in addressing the benefits of health insurance, originality, production value, use of humor, and memorability.

Animation (not over three minutes)

- Include motion graphics, infographics, and/or Active Type
- Include at least four of the following facts:
  - You can stay on your parents' plan until age 26
  - Insurers cannot drop you if you get sick or deny you coverage if you have a pre-existing condition
  - As of October 1st 2013, insurers will compete for your business on new online health insurance marketplaces (located at healthcare.gov) like airlines do on travel Web sites
  - Discounts will be provided to help purchase health insurance for individuals who earn roughly $46,000 or less
  - You could even be eligible for free health insurance through Medicaid if you earn roughly $15,000 or less
  - Starting in 2014, almost everyone will be required to have insurance
- Include at least 3 of the following facts:
  - There will be a variety of plans and benefits to choose from
  - Preventive care is covered at no additional cost to the you
  - Women cannot be charged more than men based on their gender
  - There are no annual or lifetime limits on coverage
  - Insurance companies have to spend at least 80% of the premium dollars you pay on health services, rather than advertising or profits
  - Plans must cover FDA-approved contraceptive methods for women at no extra cost to you
- Include at least 2 of these facts:
  - Over Nearly 20 million young adults (ages 18–35) across the country lack basic health insurance coverage
  - 3 million previously uninsured young adults have joined their parents' health insurance plan.
  - Three-quarters of Americans (ages 19–29) will be eligible for free or discounted health insurance
  - Young people have the highest rate of injury-related emergency department visits among all age groups

Videos in this category may present the facts using different wording and/or in a different order. Evaluated on creativity employing the required facts, originality, production value, and visual engagement.

Additional Information

Regarding Copyright/Intellectual Property: Upon Submission, each Contestant or Entrant warrants that he or she is the sole owner of the submission, that the Submission is wholly original with the Contestant and does not infringe on any copyright or any other rights of any third party of which the Contestant is aware.

Submission Rights

By participating in this Challenge, Contestant grants to the contest sponsors rights in contest entries as specified in the Official Rules available at *www.healthyyoungamerica.org*.

Compliance with Rules and Contacting Contest Winners

Finalists and the Contest Winners must comply with all terms and conditions of the Official Rules, and winning is contingent upon fulfilling all applicable requirements. Awards may be subject to Federal income taxes, and the contest sponsors will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

General Conditions

The Sponsors reserve the right to cancel, suspend, and/or modify the Challenge, or any part of it, for any reason, at the sponsors' sole discretion. Participation in this Challenge constitutes a contestant's full and unconditional agreement to abide by the Challenge's Official Rules. available at *www.healthyyoungamerica.org.*

Authority: 15 U.S.C. 3719.

Dated: August 16, 2013.

Dori Salcido,

Assistant Secretary for Public Affairs.

[FR Doc. 2013–20468 Filed 8–19–13; 11:15 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Financial Resources, Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended at Chapter AM, Office of the Assistant Secretary for Financial Resources(ASFR), as last amended at 76 FR19774–19776 dated April 8, 2011; 75 FR 369–370, dated January 5, 2010; 74 FR57679–57682, dated November 9, 2009; and 71 FR38884–88, dated July 10, 2006, as follows:

B. Under Section AM.20 Functions, make the following changes:

1. Under paragraph D, "Office of Finance (AMS)," delete in its entirety and replace with the following:

D. Chapter AMS, Office of Finance (AMS)

Section AMS.00 Mission: The Office of Finance is headed by the Deputy Assistant Secretary for Finance, who is also the Deputy Chief Financial Officer. The mission of the Office of Finance is to provide financial accountability and enhance program integrity through leadership, oversight, collaboration, and innovation.

Section AMS.10 Organization. The Office of Finance (OF) is headed by the Deputy Assistant Secretary for Finance (DASF), who is also the Deputy Chief Financial Officer and reports to the Assistant Secretary for Financial Resources/Chief Financial Officer (CFO). The office includes the following:

- Immediate Office (AMS)
- Office of Financial Policy and Reporting (AMS1)
- Office of Financial Systems Policy and Oversight (AMS2)
- Office of Program Integrity Coordination (AMS3)

Section AMS.20 Functions:

1. *Immediate Office (AMS).* The Immediate Office is responsible for support and coordination of the Office of Finance components in their management of the areas listed in section AMS.00 Mission above, including the following functions: (1) Coordinates strategic planning for the HHS CFO community and the Office of Finance; (2) Serves as the liaison with internal and external stakeholders regarding financial management matters; (3) Provides operational support for the Office of Finance and; (4) Advises the ASFR/CFO regarding financial management matters affecting the Department.

2. *Office of Financial Policy and Reporting (AMS1).* The Office of Financial Policy and Reporting (OFPR) is responsible for financial management policy and standards, internal controls, statutory financial reports and audits and other managerial reports. The Division includes:

- Division of Financial Management Policy (AMS11)
- Division of Financial Statements and Audit (AMS12)
- Division of Financial Reporting and Analysis (AMS13)
- Division of Accounting Standardization and Monitoring (AMS14)

The functions of each OFPR division include:

a. *Division of Financial Management Policy (AMS11).* The Division:

(1) Leads the Department's efforts to establish and maintain proper internal controls and ensures that requirements are met under OMB Circular A–123, "Management's Responsibility for Internal Control" and the Federal Managers' Financial Integrity Act (FMFIA);

(2) Coordinates with the OPDIVs in the preparation of the corrective action plan (CAP), which is submitted annually to OMB and reflects the material weaknesses and reportable conditions from the annual CFO audit and the FMFIA report;

(3) Recommends, develops, and promulgates Department-wide policies, procedures, and standards for financial management areas including OMB, GAO, Treasury, Federal Accounting Standards Advisory Board (FASAB), and other agency guidance related to government-wide accounting policy and standards, cash management, credit management, debt management, payment and disbursement activities and functions, and budget execution accounting;

(4) Provides support to the OPDIV CFOs for financial planning and improvement initiatives;

(5) Serves as principal staff advisor on financial management policy matters to the DASF;

(6) Manages the Departmental process for the development of the required annual report on the audited financial statements; and

(7) Maintains a system for tracking and improving cash and credit management and debt collection performance throughout the Department.

b. *Division of Financial Statements and Audit (AMS12).* The Division:

(1) Oversees the preparation and submission of consolidated financial statements for the Department based upon the OMB and Treasury submission schedules;

(2) Acts as the principal liaison with the OIG in planning the annual financial statement audit strategy under the CFO Act and the 1994 amendments under the Government Management Reform Act (GMRA);

(3) Reviews and interprets OMB, GAO, Treasury and Federal Accounting Standards Advisory Board (FASAB) guidance related to government "wide" accounting policy and standards and develops the Department's policy for implementation of reporting requirements. Assures that policies and procedures are in accordance with internal control and reporting standards of financial management activities;

(4) Provides financial statement review and analyses for the OPDIV and Department consolidated financial statements. Monitors OPDIV and accounting center key reconciliations;

(5) Provides advice and assistance to OPDIVs and STAFFDIVs on financial accounting, reporting and related fiscal matters, and advises the DASF on such matters as they relate to financial reporting; and

(6) Acts as the liaison with OMB, Treasury, and other agencies on accounting, financial policy and fiscal matters related to financial reporting, including Treasury's intergovernmental groups.

c. *Division of Financial Reporting and Analysis (AMS13).* The Division:

(1) Oversees the design, preparation, and submission of financial management reports for the Department, as required by legislation, regulations, OMB requests, and Congressional requests;

(2) Provides review and analysis of financial management reports for senior management, OMB. Congress, and other stakeholders;

(3) Reviews and interprets OMB, GAO, Treasury, and FASAB guidance related to financial management reporting requirements or data requests that are in addition to the consolidated financial statements;

(4) Supports the maintenance and operation of Department databases, and reporting tools for audited financial statements and other management reporting;

(5) Provides guidance, advice and assistance to OPDIVs and STAFFDIVs on new reporting and related fiscal matters; and

(6) Serves as principal advisor to the DASF as it relates to new required financial reports and management reporting.

d. *Division of Accounting Standardization and Monitoring (AMS14).* The Division:

(1) Establishes the planning, implementation and oversight process for the Departmental accounting treatment standardization and monitoring;

(2) Ensures the development and implementation of accounting standards in accordance with policy for the consistent development and implementation of accounting systems;

(3) Monitors the accounting center, OPDIV, and Department's financial system change management to ensure accounting standardization and compliance with Federal accounting concepts, standards, and HHS financial management policies;

(4) Provides advice and serves as the focal point with OMB, Treasury and other Federal agencies on standard general ledger compliance matters;

(5) Develops uniform business rules and data standards to support new financial system implementations and reporting requirements; and

(6) Advises the DASF on financial systems related matters, in collaboration with the Office of Financial Systems Policy and Oversight.

3. *Office of Financial Systems Policy and Oversight (AMS2).* The Office of Financial Systems Policy and Oversight (OFSPO) is responsible for overseeing the management of Department-wide financial systems. The Office includes:

- Division of Financial Systems (AMS21)
- Division of Systems Policy and Compliance (AMS22)
- Division of Planning, Governance, and Strategic Direction (AMS23)

The functions of each OFSPO Division include:

a. *Division of Financial Systems (AMS21).* The Division:

(1) Oversees the planning, design, development, implementation and maintenance of the Department-wide financial systems, including the three major core accounting systems (the Healthcare Integrated General Ledger Accounting System (HIGLAS) at the Centers for Medicare & Medicaid Services (CMS), National Institutes of Health Business System (NBS), and the Unified Financial Management System (UFMS) for the rest of the Department), a Consolidated Financial Reporting System (CFRS) and a Financial Business Intelligence System (FBIS);

(2) Oversees, coordinates and performs the project planning, execution, and monitoring activities for enhancing the Department-wide financial systems environment;

(3) Ensures that the Department's financial systems comply with applicable Federal and Departmental policies and procedures;

(4) Collaborates with other business domains and ensures that the integration with mixed financial systems is secure and reliable; and

(5) Coordinates the resolution of security vulnerabilities and audit findings identified in the financial systems.

b. *Division of Systems Policy and Compliance (AMS22).* The Division:

(1) Develops policies for Department-wide financial management systems including core financial systems and the financial portion of the mixed systems;

(2) Oversees compliance with Federal and Departmental policies and procedures for financial systems and information technology;

(3) Monitors the Department's compliance with the Federal Financial Management Improvement Act of 1996 (FFMIA) and Section 4 of the Federal Managers' Financial Integrity Act;

(4) Administers a data integrity and quality control program to ensure compliance with applicable Federal directives, Departmental financial systems policy and automated financial data exchange requirements, including the establishment of Department-wide financial definitions and data structures;

(5) Provides advice and serves as the focal point with OMB, Treasury and other Federal agencies on financial systems compliance matters; and

(6) Collaborates with the HHS Office of the Chief Information Officer (OCIO) and ensures that the financial systems environment is secure and reliable and complies with IT policies and procedures.

c. *Division of Planning, Governance, and Strategic Direction (AMS23).* The Division:

(1) Develops strategic plans to manage, enhance and support Department-wide financial systems environment;

(2) Develops and provides strategic advice on the future of Department-wide financial systems;

(3) Establishes, manages and operates governance framework for Department-wide financial system;

(4) Manages the IT portfolio and investment functions throughout the Capital Planning & Investment Control Lifecycle (CPIC) lifecycle for Department's financial systems;

(5) Establishes and manages acquisition vehicles for Department-wide financial systems;

(6) Oversees and monitors Department-wide and Operating Division specific accounting and financial management system investments; and

(7) Advises the DASF on financial systems related matters, in collaboration with the Office of Financial Policy and Reporting.

4. *Office of Program Integrity Coordination (AMS3).* The Office of Program Integrity Coordination (OPIC) serves as the central point of contact for coordinating program integrity, payment accuracy and audit resolution activities across the Department. The Office includes:

- Division of Program Integrity Integration and Oversight(AMS31)
- Division of Analytics, Research and Evaluation (AMS32)
- Division of Payment Accuracy Improvement (AMS33)
- Division of Audit Resolution (AMS34)

The functions of each Division include:

a. *Division of Program Integrity Integration and Oversight(AMS31).* The Division:

(1) Identifies opportunities and works across HHS to integrate program integrity into business operations;

(2) Coordinates, develops, and/or provides program integrity related communications, outreach, and training;

(3) Oversees, monitors, and follows-up on program integrity risk assessments;

(4) Develops tools and guidance regarding program integrity and provides technical assistance and direction to HHS Divisions on enhancing program integrity;

(5) Shares program integrity related best practices and other activities that improve program integrity;

(6) Prepares reports, briefings, and makes recommendations to senior HHS leadership, HHS Divisions, and other stakeholders on program integrity related activities; and

(7) Leads other activities that enhance HHS program integrity and integrate it into business operations.

b. *Division of Analytics, Research and Evaluation (AMS32).* The Division:

(1) Provides support for the Department's program integrity governance structure;

(2) Analyzes, evaluates, coordinates, tracks, and provides quality control/quality assurance on program integrity related information;

(3) Identifies evidenced-based program integrity practices and leverages results to recommend solutions to program integrity challenges;

(4) Develops communication resources to facilitate program integrity outreach;

(5) Develops and leverages innovative approaches, using innovative tools and technology, to enhance HHS program integrity;

(6) Prepares reports, briefings, and makes recommendations to senior HHS leadership, HHS Divisions, and other stakeholders on program integrity analytics and solutions; and

(7) Leads other activities that enhance program integrity related analytics and problem solving.

c. *Division of Payment Accuracy Improvement (AMS33).* The Division:

(1) Implements the Improper Payments Information Act of 2002, the Improper Payments Elimination and Recovery Act of 2010, the Improper Payments Elimination and Recovery Improvement Act of 2012, and improper payment related Executive Orders and other regulatory requirements;

(2) Provides analysis of high risk programs and coordinates error rate measurements and improvements for high risk programs;

(3) Coordinates efforts among HHS Divisions to recapture improper payments;

(4) Identifies and shares best practices on addressing improper payments with HHS leadership, HHS Divisions, OMB, and other agencies;

(5) Participates in inter-agency and HHS workgroups to address improper payments;

(6) Prepares reports, briefings, and makes recommendations to senior HHS leadership, HHS Divisions, OMB and other stakeholders on improper payment initiatives; and

(7) Leads other activities that support improving payment accuracy.

d. *Division of Audit Resolution (AMS34).* The Division:

(1) Reviews, resolves, and coordinates, where necessary, the audit findings of grantees affecting the programs of more than one HHS Division or Federal agency;

(2) Coordinates and provides technical assistance to grantees and HHS Divisions on all aspects of audit resolution in an effort to reduce the number and significance of audit findings;

(3) Works with HHS' Single Audit Coordinator to streamline and enhance the efficiency of the audit resolution process;

(4) Establishes and monitors Department policies regarding audit resolution, as required by OMB Circular A–50 and other OMB or regulatory guidance;

(5) Prepares the Management Report on Final Action for the Department's annual Agency Financial Report;

(6) Prepares reports, briefings, and makes recommendations to senior HHS leadership, HHS Divisions, and other stakeholders regarding audit resolution activities; and

(7) Leads other activities that support and advance audit resolution.

Dated: August 15, 2013.

E.J. Holland, Jr.,

Assistant Secretary for Administration.

[FR Doc. 2013–20525 Filed 8–21–13; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0150]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Hypertension Indication:. Drug Labeling for Cardiovascular Outcome Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by September 23, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0670. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims—(OMB Control Number 0910–0670)—Extension

This guidance is intended to assist applicants in developing labeling for outcome claims for drugs that are indicated to treat hypertension. With few exceptions, current labeling for antihypertensive drugs includes only the information that these drugs are indicated to reduce blood pressure; the labeling does not include information on the clinical benefits related to cardiovascular outcomes expected from such blood pressure reduction. However, blood pressure control is well established as beneficial in preventing serious cardiovascular events, and inadequate treatment of hypertension is acknowledged as a significant public health problem. FDA believes that the appropriate use of these drugs can be encouraged by making the connection between lower blood pressure and improved cardiovascular outcomes more explicit in labeling. The intent of the guidance is to provide common labeling for antihypertensive drugs except where differences are clearly supported by clinical data. The guidance encourages applicants to

submit labeling supplements containing the new language.

The guidance contains two provisions that are subject to OMB review and approval under the PRA, and one provision that would be exempt from OMB review:

(1) Section IV.C of the guidance requests that the CLINICAL STUDIES section of the Full Prescribing Information of the labeling should include a summary of placebo or active-controlled trials showing evidence of the specific drug's effectiveness in lowering blood pressure. If trials demonstrating cardiovascular outcome benefits exist, those trials also should be summarized in this section. Table 1 in section V of the guidance contains the specific drugs for which the FDA has concluded that such trials exist. If there are no cardiovascular outcome data to cite, one of the following two paragraphs should appear:

"There are no trials of [DRUGNAME] or members of the [name of pharmacologic class] pharmacologic class demonstrating reductions in cardiovascular risk in patients with hypertension." or "There are no trials of [DRUGNAME] demonstrating reductions in cardiovascular risk in patients with hypertension, but at least one pharmacologically similar drug has demonstrated such benefits."

In the latter case, the applicant's submission generally should refer to table 1 in section V of the guidance. If the applicant believes that table 1 is incomplete, it should submit the clinical evidence for the additional information to Docket No. FDA–2008–D–0150. The labeling submission should reference the submission to the docket. FDA estimates that no more than one submission to the docket will be made annually from one company, and that each submission will take approximately 10 hours to prepare and submit. Concerning the recommendations for the CLINICAL STUDIES section of the Full Prescribing Information of the labeling, FDA regulations at §§ 201.56 and 201.57 (21 CFR 201.56 and 201.57) require such labeling, and the information collection associated with these regulations is approved by OMB under OMB control number 0910–0572.

(2) Section VI.B of the guidance requests that the format of cardiovascular outcome claim prior approval supplements submitted to FDA under the guidance should include the following information:

1. A statement that the submission is a cardiovascular outcome claim supplement, with reference to the guidance and related Docket No. FDA–2008–D–0150.

2. Applicable FDA forms (e.g., 356h, 3397).

3. Detailed table of contents.

4. Revised labeling:

a. Include draft revised labeling conforming to the requirements in §§ 201.56 and 201.57;

b. Include marked-up copy of the latest approved labeling, showing all additions and deletions, with annotations of where supporting data (if applicable) are located in the submission.

FDA estimates that approximately 20 cardiovascular outcome claim supplements will be submitted annually from approximately 8 different companies, and that each supplement will take approximately 20 hours to prepare and submit. The guidance also recommends that other labeling changes (e.g., the addition of adverse event data) should be minimized and provided in separate supplements, and that the revision of labeling to conform to §§ 201.56 and 201.57 may require substantial revision to the ADVERSE REACTIONS or other labeling sections.

(3) Section VI.C of the guidance states that applicants are encouraged to include the following statement in promotional materials for the drug.

"[DRUGNAME] reduces blood pressure, which reduces the risk of fatal and nonfatal cardiovascular events, primarily strokes and myocardial infarctions. Control of high blood pressure should be part of comprehensive cardiovascular risk management, including, as appropriate, lipid control, diabetes management, antithrombotic therapy, smoking cessation, exercise, and limited sodium intake. Many patients will require more than one drug to achieve blood pressure goals."

The inclusion of this statement in the promotional materials for the drug would be exempt from OMB review based on 5 CFR 1320.3(c)(2), which states that "The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included * * *" within the definition of "collection of information."

In the **Federal Register** of April 18, 2013 (78 FR 23271), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission to Docket No. FDA–2008–D–0150	1	1	1	10	10
Cardiovascular Outcome Claim Supplement Submission	8	2.5	20	20	400
Total					410

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 16, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–20471 Filed 8–21–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0871]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Studies on Consumer Responses to Nutrient Content Claims on Fortified Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 23, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–New and title "Experimental Studies on Consumer Responses to Nutrient Content Claims on Fortified Foods." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, 301–796–5733, *domini.bean@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Experimental Studies on Consumer Responses to Nutrient Content Claims on Fortified Foods—OMB Control Number 0910–New)

I. Background

The Nutrition Labeling and Education Act gave FDA the authority to issue regulations that require almost all packaged foods to bear nutrition labeling. The law also allows manufacturers to provide other nutrition information on labels in the form of various types of statements, including claims, as long as such statements comply with the regulatory limits that govern the use of each type of statement. There are three types of claims that the food industry can voluntarily use on food labels: (1) Health claims, (2) nutrient content claims, and (3) structure/function claims. All claims must be truthful and not misleading (Ref. 1).

FDA's policy on fortification (21 CFR 104.20) establishes a set of principles that serve as a model for the rational addition of nutrients to foods. FDA has an interest in the American public achieving and maintaining diets with optimal levels of nutritional quality, wherein healthy diets are composed of foods from a variety of nutrient sources. FDA does not encourage the addition of nutrients to certain food products (including sugars or snack foods such as [cookies] candies, and carbonated beverages). FDA is interested in studying whether fortification of these foods could cause consumers to believe that substituting fortified snack foods for more nutritious foods would ensure a nutritionally sound diet.

Research suggests consumer product perceptions and purchase decisions can be influenced by labeling statements and different labeling statements may have different influences (Refs. 2 through 5). FDA, as part of its effort to promote public health, proposes to conduct a controlled, randomized experiment to explore consumer responses to expressed and implied nutrient content claims on the labels of snack foods such as cookies, carbonated beverages, and candy. The study will use a 15-minute Web-based questionnaire to collect information from 7,500 English-speaking adult members of an online consumer panel maintained by a contractor. Researchers will endeavor to collect samples that reflect the U.S. Census on gender, education, age, and ethnicity/race for both modes of administration.

Potential conditions for the study include the following: (1) A mock snack product with a claim similar to "[a]s much [nutrient] as a serving of [food product];" (2) a mock candy with the claim "[g]ood source of [nutrient];" and (3) a mock carbonated beverage with the claim, "product name] plus [nutrient]." Each participant in each study will be randomly assigned to view a label image. Each participant in each study will also be randomly allowed or disallowed to access the Nutrition Facts label of the product. All label images will be mock products resembling actual food labels found in the marketplace.

Participants will view label images and answer questions about their perceptions and reactions to the label. Product perceptions (e.g., healthiness, potential health benefits, levels of nutrients), label perceptions (e.g., helpfulness and credibility), and purchase/choice questions will constitute the measures of response in the experiment. To help understand the data, the study will also collect information about participants' background, such as purchase and consumption of similar products; nutrition knowledge; dietary interests; motivation regarding label use; health status and demographic characteristics.

The study is a part of the Agency's continuing effort to enable consumers to make informed dietary choices and construct healthful diets. Results of the study will be used primarily to inform the Agency's understanding of how claims on the packages of fortified food may affect how consumers perceive a product or a label, which may in turn affect their dietary choices. The results of the study will not be used to develop population estimates.

In accordance with 5 CFR 1320.8(d), in the **Federal Register** of August 15, 2012 (77 FR 48988), FDA published a 60-day notice requesting public comment on the proposed information collection. FDA received six letters in response to the notice, each containing one or more comments. The comments, and the agency's responses, are discussed in the following paragraphs. One of the comments received was not responsive to the comment request on the four specified aspects of the collection of information. This non-responsive comment will not be addressed in this document. We respond to the remaining comments in this document. For ease of reading, we preface each comment with a numbered "Comment" and each response by a corresponding numbered "Response." We have numbered each comment to help distinguish between different topics. The number assigned to each comment is for organizational purposes only and does not signify the comment's value, or importance, or the order in which it was received.

(Comment 1) Four comments expressed support of the utility of the study for FDA's mission, stating that use of the study results will help FDA: (1) Fulfill its role as a steward of the public health; (2) continue to help consumers use the food label to make informed consumption decisions; and (3) help FDA to continue the policy against fortifying sugars or snack foods such as cookies, candies, and carbonated beverages.

(Response 1) FDA agrees with the comments.

(Comment 2) Reacting to FDA's declaration in the 60-day notice (77 FR 48988), that it intends to use "a mock snack product" to study nutrient content claims on fortified foods, one comment requested that FDA limit testing of such claims to sugars, cookies, candy, and carbonated beverages.

(Response 2) FDA agrees with the comment. FDA will limit testing of nutrient content claims on fortified snack foods to mock cookies, candy, and carbonated beverages.

(Comment 3) One comment requested that FDA use images of actual commercially available labels for fortified snack products in the study instead of the proposed mock snack food labels, claiming that use of actual labels will increase the external validity of the studies.

(Response 3) FDA disagrees with the comment. Actual labels will increase the external validity of the findings but actual labels also are highly likely to introduce brand effects, a bias that may be difficult to separate from effects of the claims themselves, which is the focus of the studies.

Recent study design decisions have indicated that the Agency needs a larger sample size for Study 1 than originally expected; therefore, the Agency will not conduct Study 2 (a shopping simulation study) which was described in the 60-day notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Cognitive interview screener	75	1	75	0.083 (5 minutes)	6
Cognitive interview	9	1	9	1 hour (60 minutes)	9
Pretest invitation	1,600	1	1,600	0.033 (2 minutes)	53
Pretest	400	1	400	0.25 (15 minutes)	100
Survey invitation	32,000	1	32,000	0.033 (2 minutes)	1,056
Survey	7,500	1	7,500	0.25 (15 minutes)	1,875
Total					3,099

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov*. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. U.S. Food and Drug Administration. Claims That Can Be Made for Conventional Foods and Dietary Supplements. September 2003. Available at *http://www.fda.gov/Food/IngredientsPackagingLabeling/LabelingNutrition/ucm111447.htm*.

2. Drichoutis, A.C., P. Lazaridis, and R.M. Nayga, "Consumers' Use of Nutritional Labels: A Review of Research Studies and Issues," *Academy of Marketing Science Review*, 2006(9), 2006. Available at *http://www.amsreview.org/articles/drichoutis09-2006.pdf*.

3. Lähteenmäki, L., P. Lampila, and K. Grunert, et al., "Impact of Health-Related Claims on the Perception of Other Product Attributes," *Food Policy*, 23: 230–239, 2010.

4. Labiner-Wolfe, J., C.-T. J. Lin, and L. Verrill, "Effect of Low Carbohydrate Claims on Consumer Perceptions about Food Products' Healthfulness and Helpfulness for Weight Management," *Journal of Nutrition Education and Behavior*, 42(5): 315–320, 2010.

5. Roe, B., A.S. Levy, and B.M. Derby, "The Impact of Health Claims on Consumer Search and Product Evaluation Outcomes: Evidence from FDA Experimental Data," *Journal of Public Policy and Marketing*, 18(1): 89–105, 1999.

Dated: August 16, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–20469 Filed 8–21–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0745]

Request for Comments on the Food and Drug Administration Safety and Innovation Act Section 907 Report

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a public docket for comments pertaining to the report issued as required by section 907 of the Food and Drug Administration Safety and Innovation Act (FDASIA). This notice is intended to solicit input from all relevant stakeholders before FDA issues an action plan to address issues raised in the report and to announce that such information submitted to FDA is available to all interested persons in a timely fashion.

DATES: Submit electronic or written comments by November 20, 2013.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Pamela E. Scott, Office of Women's Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 2320, Silver Spring, MD 20903,

301–796–9441, *FDASIASECTION907@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, the President signed FDASIA (Pub. L. 112–144) into law. Section 907 of FDASIA requires that FDA report on and address certain information regarding clinical trial participation by demographic subgroups and subset analysis of the resulting data. Specifically, section 907(a) of FDASIA requires the Secretary of Health and Human Services (the Secretary), acting through the FDA Commissioner, to publish on FDA's Internet Web site a report "addressing the extent to which clinical trial participation and the inclusion of safety and effectiveness data by demographic subgroups including sex, age, race, and ethnicity, is included in applications submitted to the FDA," and provide such publication to Congress. The report entitled "Reporting of Inclusion of Demographic Subgroups in Clinical Trials and Data Analysis in Applications for Drugs, Biologics, and Devices" is available at *http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FDASIA/ucm356316.htm.*

Section 907(b) of FDASIA further requires the Secretary, again acting through the Commissioner, to publish an action plan on the Internet Web site of FDA and provide such publication to Congress. The action plan is to contain recommendations, as appropriate, to improve the completeness and quality of analyses of data on demographic subgroups in summaries of product safety and effectiveness and in labeling; on the inclusion of such data, or the lack of availability of such data in labeling; and on ways to improve public availability of such data to patients, health care providers, and researchers. These recommendations are to include, as appropriate, a determination that distinguishes between product types and applicability. The action plan is due not later than 1 year after the publication of the report described previously.

FDA is opening a docket for 90 days to provide an opportunity for interested individuals to submit comments on the report for use in the development of the action plan. When submitting comments please reference the section of the report to which your comments pertain. This docket is intended to ensure that stakeholders have an opportunity to provide comments and that such information submitted to FDA is available to all interested persons in a timely fashion.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: August 16, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–20352 Filed 8–20–13; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0277]

Guidance for Industry on Compliance With Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Compliance With Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents." This guidance is intended to help small entities and other stakeholders comply with FDA's regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Office of Compliance and Enforcement, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 877–287–1373, *ctpcompliance@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31; 123 Stat. 1776) was enacted on June 22, 2009, amending the Federal Food, Drug, and Cosmetic Act (FD&C Act) and providing FDA with authority to regulate tobacco products. Section 102 of the Tobacco Control Act requires FDA to publish final regulations regarding cigarettes and smokeless tobacco which are identical in their provisions to the regulations issued by FDA on August 28, 1996 (61 FR 44396), with certain specified exceptions. In the **Federal Register** of March 19, 2010 (75 FR 13225), FDA published its final regulations entitled "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents," codified at 21 CFR part 1140. The final regulations apply to manufacturers, distributors, and retailers who manufacture, distribute, or sell cigarettes or smokeless tobacco products.

These regulations took effect on June 22, 2010, and impose restrictions on sales and distribution, including youth access, and advertising and labeling of cigarettes, including roll-your-own tobacco, cigarette tobacco, and smokeless tobacco. For instance, retailers are: Prohibited from selling cigarettes, including roll-your-own tobacco, cigarette tobacco, or smokeless tobacco to persons under the age of 18; required to verify the age of all customers under the age of 27 by checking a photographic identification that includes the bearer's date of birth; and prohibited from distributing free samples of cigarettes.

FDA announced the publication of a draft guidance document on this subject on June 9, 2010 (75 FR 32791), and issued a revised draft guidance on March 23, 2011 (76 FR 16424), to

remove potential ambiguities and address several issues not included in the original draft guidance. In response to comments submitted to the public docket, at stakeholder meetings, and in calls from the public, FDA has provided additional clarifying examples to assist in complying with part 1140.

II. Significance of Guidance

FDA is issuing this guidance document consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on "Compliance with Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

An electronic version of the guidance document is available on the Internet at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: August 19, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–20506 Filed 8–21–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-day Comment Request: NIH NCI Central Institutional Review Board (CIRB) Initiative (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: CAPT Michael Montello, Pharm. D., MBA, Cancer Therapy Evaluation Program, Operations and Informatics Branch, 9609 Medical Center Drive, Rockville, MD 20850 or call non-toll-free number (240) 276–6080 or Email your request, including your address to: *mike.montello@nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: NIH NCI Central Institutional Review Board (CIRB) Initiative (NCI), 0925–0625, Revision, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Cancer Institute (NCI) Central Institutional Review Board (CIRB) provides a centralized approach to human subject protection and provides a cost efficient approach avoiding duplication of effort at each institution. The CIRB provides the services of a fully constituted IRB and provides a comprehensive and efficient mechanism to meet regulatory requirements pertaining to human subject protections including: Initial reviews, continuing reviews, review of amendments, and adverse events. The Initiative consists of three central IRBs: Adult CIRB—late phase emphasis, Adult CIRB—early phase emphasis, and Pediatric CIRB. CIRB membership includes oncology physicians, surgeons, nurses, patient advocates, ethicists, statisticians, pharmacists, attorneys and other health professionals. The benefits of the CIRB Initiative reaches research participants, investigators and research staff, Institutional Review Boards (IRB), and Institutions. Benefits include: Study participants having dedicated review of NCI-sponsored trials for participant protections, access to more trials more quickly and access to trials for rare diseases, accrual to trials begin more rapidly, ease of opening trials, elimination of need to submit study materials to local IRBs, and elimination of the need for a full board review. The benefits to the National Clinical Trials Network and Experimental Therapy-Clinical Trials Network include a cost efficient approach that avoids duplication of efforts at each institution. A variety of information collection tools are needed to support NCI's CIRB activities which include: Worksheets, forms and a survey that is provided to all customers contacting the CIRB helpdesk.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,199.

ESTIMATES OF ANNUAL BURDEN HOURS

Form name	Type of respondents	Number of respondents	Frequency of responses per respondent	Average burden per response (in hours)	Total annual burden hours
CIRB Customer Satisfaction Survey	Participants/ Board Members.	1500	1	10/60	250
Request for 30 Day Web site Access Form	Participants	25	1	10/60	4
Authorization Agreement and Division of Responsibilities between the NCI CIRB and Signatory Institution.	Participants	340	1	30/60	170
NCI CIRB Signatory Enrollment Form	Participants	40	1	4	160
IRB Staff at Signatory Institution's IRB	Participants	25	1	10/60	4
Investigator at Signatory Institution	Participants	65	1	10/60	11
Research Staff at Signatory Institution	Participants	65	1	10/60	11
Investigator at Affiliate Institution with an IRB	Participants	25	1	10/60	4
Research Staff at Affiliate Institution with an IRB	Participants	25	1	10/60	4
Investigator at Affiliate Institution without an IRB	Participants	25	1	10/60	4
Research Staff at Affiliate Institution without an IRB	Participants	25	1	10/60	4
Institutional Contact for Signatory Institution	Participants	65	1	10/60	11
IRB at Signatory Institution	Participants	25	1	10/60	4
Component Institution at Signatory Institution	Participants	65	1	10/60	11
IRB at Affiliate Institution	Participants	25	1	10/60	4
Affiliate Institution without an IRB	Participants	25	1	10/60	4
Facilitated Review Acceptance Form	Participants	300	1	10/60	50
Study Review Responsibility Transfer Form	Participants	80	1	10/60	13
Annual Signatory Institution Worksheet About Local Context.	Participants	120	1	20/60	40
Annual Principal Investigator Worksheet About Local Context.	Participants	120	1	20/60	40
Study-Specific Worksheet About Local Context	Participants	220	1	20/60	73
Study Closure or Transfer of Study Review Responsibility Form.	Participants	120	1	10/60	20
Potential Unanticipated Problem or Serious or Continuing Noncompliance Reporting Form.	Participants	120	1	15/60	30
Add or Remove Signatory and/or Component Institution Personnel.	Participants	120	1	10/60	20
Add or Remove Affiliate Institution Personnel	Participants	120	1	10/60	20
Add or Remove Component Institution	Participants	120	1	10/60	20
Add or Remove Affiliate Institution	Participants	120	1	10/60	20
One Time Study Roll Over Worksheet	Participants	120	1	10/60	20
Change of Signatory Institution PI Form	Participants	120	1	10/60	20
CIRB Board Member Biographical Sketch Form	Board Members	25	1	15/60	6.25
CIRB Board Member Contact Information Form	Board Members	25	1	10/60	4
CIRB Board Member W–9	Board Members	25	1	15/60	6
CIRB Board Member Non-Disclosure Agreement (NDA)	Board Members	25	1	10/60	4
CIRB Direct Deposit Form	Board Members	25	1	15/60	6
NCI Adult/Pediatric CIRB Application for Treatment Studies.	Participants	25	1	2	50
NCI Adult/Pediatric CIRB Application for Ancillary Studies.	Participants	10	1	2	20
NCI Adult/Pediatric CIRB Application for Continuing Review.	Participants	80	1	1	80
Summary of CIRB Application Revisions	Participants	20	1	30/60	10
Locally-Developed Material Submission Form	Participants	15	1	15/60	4
Application Request to Review Translated Documents	Participants	15	1	15/60	4
Adult Initial Review of Cooperative Group Protocol	Board Members	15	1	4	60
Pediatric Initial Review of Cooperative Group Protocol	Board Members	15	1	4	60
Adult Continuing Review of Cooperative Group Protocol	Board Members	130	1	1	130
Pediatric Continuing Review of Cooperative Group Protocol.	Board Members	70	1	1	70
Adult Amendment of Cooperative Group Protocol	Board Members	10	1	2	20
Pediatric Amendment of Cooperative Group Protocol	Board Members	10	1	2	20
Adult Cooperative Group Response to CIRB Review	Participants	15	1	1	15
Pediatric Cooperative Group Response to CIRB Review.	Participants	10	1	1	10
Adult Pharmacist's Review of a Cooperative Group Study.	Board Members	10	1	2	20
Pediatric Pharmacist's Review of a Cooperative Group Study.	Board Members	20	1	2	40
CIRB Statistical Reviewer Form	Board Members	30	1	30/60	15
Determination of Unanticipated Problem (UP) and/or Serious or Continuing Noncompliance (SCN).	Board Members	40	1	10/60	7
Adult Expedited Amendment Review	Board Members	350	1	30/60	175

ESTIMATES OF ANNUAL BURDEN HOURS—Continued

Form name	Type of respondents	Number of respondents	Frequency of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Ped Expedited Amendment Review	Board Members ..	150	1	30/60	75
Adult Expedited Continuing Review	Board Members ..	120	1	30/60	60
Ped Expedited Continuing Review	Board Members ..	70	1	30/60	35
Adult Expedited Study Closure	Board Members ..	20	1	20/60	7
Ped Expedited Study Closure	Board Members ..	20	1	20/60	7
Adult Expedited Study Chair Response to Required Mod.	Board Members ..	350	1	15/60	88
Ped Expedited Study Chair Response to Required Mod	Board Members ..	150	1	15/60	38
Reviewer Worksheet of Translated Documents	Board Members ..	15	1	15/60	4
Reviewer Advertisement Checklist	Board Members ..	10	1	20/60	3

Dated: August 15, 2013.

Vivian Horovitch-Kelley,

Program Analyst, National Institutes of Health.

[FR Doc. 2013–20415 Filed 8–21–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biophysics, Biochemistry and Chemistry.

Date: September 18–19, 2013.

Time: 8:00 a.m. to 3:00 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 L Bowers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Immune Regulation by Cannabinoids.

Date: September 23–24, 2013.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 16, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–20422 Filed 8–21–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Assessment of the Town Hall Meetings on Underage Drinking Prevention—(OMB No. 0930–0288)—Revision

The Substance Abuse and Mental Health Services Administration/Center for Substance Abuse Prevention (SAMHSA/CSAP) is requesting a revision from the Office of Management and Budget (OMB) of the information collection regarding the Assessment of the Town Hall Meetings (THMs) on Underage Drinking Prevention. The current data collection has approval under OMB No. 0930–0288, which expires on November 30, 2013. The assessment will continue to collect data through two existing data collection instruments: The Organizer Survey and the Participant Form.

Clarifications

Two questions were dropped from the Organizer Survey, thus bringing the total number of questions to 30. Additionally, 10 questions have been updated to provide clarification on the intent of the questions. The following table provides a summary of the proposed question clarifications and the questions that were deleted from the Organizer Survey.

Current question/item	Clarification	Rationale for clarification
q5—Did you collaborate with other organizations to coordinate the THM event? *[No change to response options]*	q5—Did any other community-based organization (e.g., business, school) collaborate with your organization/coalition in hosting this event?	Clarifies the point of question, which is community involvement beyond the host organization.

Current question/item	Clarification	Rationale for clarification
q6—Were youth involved in organizing and/or planning the THM event? *[No change to response options]*	q6—Were youth involved in organizing and/or hosting the THM event?	Clarifies the role of youth.
q7—Was the topic of the THM event solely on underage drinking? *[No change to response options]*	q7—Was underage drinking the only topic addressed by the THM event?	Editorial.
q9—How was the THM event promoted in the community? (Mark all that apply.) *Response option to be clarified: E-newsletter/listserv.*	q9—How was the THM event promoted in the community? (Mark all that apply.) *Clarification to: E-newsletter/email list.*	Editorial.
q12—Which of the following was among the discussion topics at the THM event? (Mark all that apply.) *Response options to be clarified: Alcohol advertising to which youth are exposed, and Parental involvement.*	q13—Which of the following topics were discussed at the THM event? (Mark all that apply.) *Clarification to: Youth exposure to alcohol advertising, and Role of parents in prevention.*	Editorial; and clarifies parental involvement. Additionally, propose to rearrange the question order of q12 and q13 to follow a more logical sequence of speaker and then topics discussed.
q16—What are some of the major actions planned as a result of this THM event? (Mark all that apply.) *[No change to response options].*	q16—What underage drinking prevention activities are planned as a result of this THM event? (Mark all that apply.)	Clarifies the type of actions/activities that are planned as those specifically related to underage drinking.
q22—Overall, how satisfied are you with the training you received? *Response options: Very satisfied, Somewhat satisfied, Somewhat dissatisfied, Very dissatisfied.*	q22—The training has been useful to my organization's prevention work. *Response options: Strongly agree, Agree, Disagree, Strongly disagree, Not applicable.*	Clarifies the utility of the training by the organization instead of satisfaction with the training. Clarifying measure is approved under OMB No. 09130–0197, expiration 03/31/14.
q23—To what extent has the training you received improved your capacity to provide effective (underage drinking) prevention services? *Response options: A great deal, Somewhat, Not very much, Not at all, Not applicable.*	q23—The training I received improved my organization's capacity to do prevention work. *Response options: Strongly agree, Agree, Disagree, Strongly disagree, Not applicable.*	Clarifies the improved capacity of the organization from the training provided. Clarifying measure is approved under OMB No. 09130–0197, expiration 03/31/14.
q24—To what extent have the training recommendations you received most recently been fully implemented? *Response options: Fully, partially, Not yet begun.*	N/A	Question deleted; no longer applies.
q27—Overall, how satisfied are you with the TA you received? *Response options: Very satisfied, Somewhat satisfied, Somewhat dissatisfied, Very dissatisfied.*	q26—The technical assistance has been useful to my organization's prevention work. *Response options: Strongly agree, Agree, Disagree, Strongly disagree, Not applicable.*	Clarifies the utility of the TA by the organization instead of satisfaction with the TA. Clarifying measure is approved under OMB No. 09130–0197, expiration 03/31/14.
q28—To what extent has the TA you received improved your capacity to provide effective (underage drinking) prevention services? *Response options: A great deal, Somewhat, Not very much, Not at all, Not applicable.*	q27—The technical assistance has improved my organization's capacity to do prevention work. *Response options: Strongly agree, Agree, Disagree, Strongly disagree, Not applicable.*	Clarifies the improved capacity of the organization from the TA provided. Clarifying measure is approved under OMB No. 09130–0197, expiration 03/31/14.
q29—To what extent have the TA recommendations you received most recently been fully implemented? *Response options: Fully, partially, Not yet begun.*	N/A	Question deleted; no longer applies.

Minor clarifications were also made to two items on the Participant Form. Additionally, a Spanish version of the Participant Form will be provided to community-based organizations upon request. The following table provides a summary of the proposed clarifications to the two items on the Participant Form.

Current question/item	Clarification	Rationale for clarification
Informed consent statement, last sentence Please do not write your name anywhere on this form.	*Clarification to: Please do not write your name or other identifying information (e.g., birthday) anywhere on this form.*	Clarifies request not to offer identifying information on form to protect respondent anonymity.
q11—How old are you? *Response options to be clarified:* 13 years old or younger, 14 to 18 years old, and 19 to 24 years old.	q11—How old are you? *Clarification to: 12 to 17 years old, 18 to 20 years old, and 21 to 24 years old.*	Clarifies reporting ages of underage drinking for the Government Performance Results Act.

Data Collection Component

SAMHSA/CSAP will use a web-based method to collect data through the Organizer Survey and a paper-and-pencil approach to collect data through the Participant Form. The web-based application will comply with the requirements of Section 508 of the

Rehabilitation Act to permit accessibility to people with disabilities.

Every 2 years, the Organizer Survey will be completed by an estimated 3,400 THM event organizers and will require only one response per respondent. It will take an average of 20 minutes (0.333 hours) to review the instructions and complete the survey. This burden estimate is based on comments from three 2012 THM organizers who reviewed the survey and provided comments on how long it would take them to complete it.

The Participant Form will be completed by an average of 30 participants per sampled community-based organization (n=400) and will require only one response per respondent. It will take an average of 5 minutes (0.083 hours) to review the instructions and complete the form.

ESTIMATED ANNUALIZED BURDEN TABLE

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Organizer Survey	3,400	1	3,400	0.333	1,132.20
Participant Form	12,000	1	12,000	0.083	996.00
Total	15,400	—	15,400	—	2,128.20

SAMHSA supports nationwide THMs every other year. Collecting data on each round of THMs, and using this information to inform policy and measure impact, supports SAMHSA's strategic initiative number 1: Prevention of substance abuse and mental illness. A specific goal under this initiative is to prevent or reduce the consequences of underage drinking and adult problem drinking; a specific objective is to establish the prevention of underage drinking as a priority issue for states, territories, tribal entities, colleges and universities, and communities.

SAMHSA will use the information collected to document the implementation efforts of this nationwide initiative, determine if the federally sponsored THMs lead to additional activities within the community that are aimed at preventing and reducing underage drinking, identify what these activities may possibly include, and help plan for future rounds of THMs. SAMHSA intends to post online a summary document of each round of THMs and present findings at national conferences attended by community-based organizations that have hosted THMs and might host future events. Similarly, SAMHSA plans to share findings with the Interagency Coordinating Committee on the *Prevention of Underage Drinking:* Agencies within this committee encourage their grantees to participate as event hosts. Additionally, the information collected will support performance measurement for SAMHSA programs under the Government Performance Results Act.

Written comments and recommendations concerning the proposed information collection should be sent by September 23, 2013 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2013–20477 Filed 8–21–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5685–N–03]

60-Day Notice of Proposed Information Collection Section 3 Business Registry Surveys

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, 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:* October 21, 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: Staci Gilliam, Director, Economic Opportunity Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5236, Washington DC 20410; telephone (202) 402–3468. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION:

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by requiring recipients of certain HUD financial assistance, to the greatest extent feasible, to provide training and job opportunities generated by such financial assistance to local low- and very low-income persons and to award contracts to eligible businesses that substantially employ those persons. HUD is statutorily charged with the authority and responsibility for implementing and enforcing Section 3.

Recipients of HUD funding that is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 are required, to the greatest extent feasible, to meet the minimum numerical goals for employment and contracting set forth in the Section 3 regulation at 24 CFR 135.30.

In November 2011, HUD launched the Section 3 Business Registry Pilot program in five metropolitan areas—Detroit, New Orleans, Los Angeles, Miami, and Washington, DC as a resource to help agencies that receive certain HUD funds to meet their Section 3 obligations at 24 CFR part 135 (OMB Approval 2529–0052).

HUD's Section 3 Business Registry is based on similar federal business registries maintained by the Small Business Administration (SBA) and the Veterans Administration. It allows firms that meet one of the three regulatory definitions of a Section 3 Business to self-certify their eligibility with HUD. Once registered, these firms are placed into a searchable online database of Section 3 Businesses that interested parties such as public housing authorities, local government agencies, contractors, and others can use to notify these entities about the availability of certain HUD-funded contracts.

This information collection consists of two surveys that assess the overall effectiveness of the Section 3 Business Registry. The first survey measures the outcomes of the pilot program for Section 3 Businesses that have registered with HUD. The second survey, evaluates feedback from recipients of HUD funding in the five pilot locations on the usefulness of the Section 3 Business Registry. Both surveys will be issued via web-based survey sites such as *www.Surveymonkey.com* and will produce information that may be useful to HUD for developing policies regarding the Section 3 Business Registry. Responding to these surveys is voluntary.

On April 16, 2013, HUD was granted six-month emergency approval for this information collection by the Office of Management and Budget (OMB approval 2529–0053). At this time, HUD is requesting 3-year approval pursuant to the Paperwork Reduction Act. HUD solicits comment in the following areas outlined in Section A on the information collection described in Section B.

A. 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 B 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.

B. Overview of Information Collection

Title of Proposal: Section 3 Business Registry Surveys

Office: Fair Housing and Equal Opportunity

OMB Control Number: 2529–0053

Description of the need for the information and proposed use: This information collection contains two surveys that will provide insights into the effectiveness of the Section 3 Business Registry and assess potential outcomes. This information may be useful to HUD for developing policies regarding the Section 3 Business Registry.

This information collection will be limited to businesses that have self-certified their Section 3 eligibility to HUD and recipients of HUD funding (i.e., Public Housing Authorities and local government agencies). The surveys will be sent electronically to all certified businesses in the Section 3 Business Registry database and HUD funding recipients in an effort to produce the greatest amount of responses. Random sampling will not be used to identify potential respondents. Respondents will have a minimum of 60 days to respond to the surveys. Responding to these surveys is voluntary.

Agency form numbers, if applicable: Form HUD 968 and Form HUD 969

Members of affected public: Businesses that are either owned by, or substantially employ, low- or very low-income persons; low-income persons; developers; members of the general public; public housing agencies; and State and local governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: At this time, there are approximately 800 businesses in the five pilot locations that have self-certified their eligibility with HUD and 150 HUD-funding recipients in the five pilot areas may complete the Section 3 surveys. It is estimated that each survey will take approximately 30 minutes to complete for a total of 475 hours.

Status of the proposed information collection: Active

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 13, 2013.

Bryan Greene,

Acting Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2013–20520 Filed 8–21–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management,

Fish and Wildlife Service

National Park Service

[NPS–WASO–VRP–09328; PXVPADO515]

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Fee Schedule for Commercial Filming and Still Photography Permits

AGENCY: Office of the Secretary, Bureau of Land Management, U.S. Fish and Wildlife Service, National Park Service, Interior; Forest Service, Agriculture.

ACTION: Notice of availability; request for public comment.

SUMMARY: The Department of the Interior and the Department of Agriculture propose to adopt a fee schedule for commercial filming and still photography conducted on public lands under their jurisdiction. The proposed fee schedule would establish land-use fees for commercial filming and still photography that are consistent for the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management and U.S. Forest Service. The fees would be based on sound business management principles and would provide a fair return to the United States, as required in the law.

DATES: Written comments will be accepted until September 23, 2013.

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

- *Email: location_fee_notice_2013@nps.gov;* put "Commercial Filming Fee Schedule" in the subject line.

• *Mail:* Lee Dickinson, Special Park Uses Program Manager, National Park Service, 1849 C Street NW., ORG CODE 2460, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, National Park Service at 202–513–7092 or by email at *lee_dickinson@nps.gov*. Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above named individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Public Law 106–206 (16 U.S.C. 460*l*–6d) directs the Secretaries of the Interior and Agriculture to establish a reasonable land-use fee for commercial filming and still photography conducted on lands under their jurisdiction. The law also directs the agencies to recover all costs incurred in connection with commercial filming activity. The Department of the Interior (DOI) is publishing in today's **Federal Register** regulations that implement these requirements of the law. The fee schedule that we are proposing in this notice would establish the amounts of the fees charged by DOI agencies under 43 CFR 5.8(a) and would provide a fair return to the United States for the use of federal lands. The fee does not recover administrative costs, which are collected separately.

Public Law 106–206 states that fees must be based on several criteria, including:

1. The number of days the commercial filming or still photography takes place on federal land.

2. The size of the film crew present on federal land.

3. The amount and type of equipment present on federal land.

As used in this notice, the term commercial filming means the film, electronic, magnetic, digital or other recording of a moving image by a person, business, or other entity for a market audience with the intent of generating income. Examples include, but are not limited to feature film, video, television broadcast, documentary, or similar projects. Commercial filming may include the advertisement of a product or service and/or the use of actors, models, sets, or props.

Still photography conducted on lands managed by the Department of the Interior (DOI) or the Forest Service (USFS) requires a permit when it involves models or props that are not a part of the site's natural or cultural resources or administrative facilities, or when it takes place at a location where members of the public generally are not allowed, or where additional administrative costs are likely. The land-use fee for still photography would apply only to still photography that requires a permit.

Background

On December 14, 2000, the National Park Service (NPS) published a notice in the **Federal Register** (65 FR 78186) requesting public comments on a proposed land-use fee schedule for commercial filming and still photography for all units of the National Park System. The NPS received 34 comments from the public on the proposed fee schedule.

In general, respondents stated that charging a fee for each person was confusing and that the proposed fees were too high. There were additional comments on the proposed implementation of the schedule. Respondents proposed charging less for still photography than for commercial filming and proposed charging only one fee per day, regardless of how many different sites were used, rather than a fee per day per location, as proposed by the NPS.

Shortly after the public comment period closed, DOI decided to develop a regulation establishing a single land-use fee schedule for commercial filming and still photography for all DOI agencies. DOI created a task force to develop the fee schedule that included personnel from the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the NPS. Representatives from DOI's Office of the Solicitor and the Forest Service also served on the task force. To enhance consistency in management of federal lands, DOI and the Forest Service both anticipated that the Forest Service would adopt the same land-use fee schedule for commercial filming and still photography.

The task force used the proposed NPS land-use fee schedule as a starting point for the Departmental fee schedule for commercial filming and still photography and considered the comments received on the NPS proposed fee schedule. Task force members requested information from state, local, and tribal land management agencies and privately owned cultural institutions about land-use fees they charge for commercial filming and still photography. A task force member attended the Association of Film Commissioners International Location "Expo" to discuss with state and location film commissioners the land use fees they charge for commercial filming and still photography. A task force member also spoke with representatives of the film and photography industry about their experience with land use fees.

The task force developed separate land-use fee schedules for commercial filming and still photography permits. The task force modified the NPS proposed land-use fee schedule to establish different fee categories for each schedule based on the number of people engaging in commercial filming or still photography at a specific site and, in the case of the category for 1 to 2 people, the amount and type of equipment used.

A DOI economist conducted cost-benefit and Unfunded Mandates Act analyses and a Regulatory Flexibility Act analysis of the NPS proposed fee schedule that the task force used in creating the proposed fee schedules. These analyses are available on-lineat *http://www.nps.gov/applications/digest/NPS_Filming_Fees_BCA_FINAL.pdf* or by contacting Lee Dickinson, NPS Special Park Uses Program Manager, at *lee_dickinson@nps.gov* or 202–513–7092.

Proposed Fee Schedules

Commercial filming land-use fee schedule

Number of people	Fee
1–3, camera and tripod only	$10/day or $250/month
1–5, more than a camera and tripod.	75/day
6–10	150/day
11–30	350/day
31–50	650/day
51–70	1,000/day
over 70	1,500/day

Still photography land-use fee schedule

Number of people	Fee
1–3, camera and tripod only	$10/day or $250/month
1–5, more than a camera and tripod.	50/day
6–10	100/day
11–20	200/day
21–30	300/day
over 30	450/day

The land-use fee schedule would be adjusted annually using the July 12-month, unadjusted Consumer Price Index-Urban (CPI–U), which measures the average change over time in the prices paid by urban consumers for the 12-month period ending July 31 each year. Changes to the fee schedule would be rounded to the nearest dollar.

No annual adjustment to the fee schedule would exceed five percent. When the annual change to the CPI–U results in an annual adjustment of more than five percent, we would add the portion of the adjustment exceeding five percent to the following year's schedule.

Each year we would publish the revised land-use fee schedule in the **Federal Register** by October 1, and the adjustments would become effective the following January 1.

Jonathan B. Jarvis,

Director, National Park Service.

David Cottingham,

Acting Director. U.S. Fish and Wildlife Service.

Mike Pool,

Acting Director, Bureau of Land Management.

Thomas L. Tidwell,

Chief, U.S. Forest Service.

[FR Doc. 2013–20440 Filed 8–21–13; 8:45 am]

BILLING CODE 4312–EJ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–878]

Certain Electronic Devices Having Placeshifting or Display Replication and Products Containing Same; Commission Determination Not To Review an Initial Determination Finding the Sole Remaining Respondent To Be in Default; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 11) issued by the presiding administrative law judge ("ALJ") on July 29, 2013, finding the last remaining respondent in this investigation to be in default. Accordingly, the Commission requests written submissions, under the schedule set forth below, on remedy, public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Robert Needham. Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 17, 2013, based on a complaint filed by Sling Media, Inc. ("Sling"). 78 FR 22899–900. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices having placeshifting or display replication functionality, and products containing same, by reason of infringement of certain claims of U.S. Patent Nos. 7,725,912; 7,877,776; 8,051,454; 8,060,909; 8,266,657; and 8,365,236. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named as respondents Belkin International, Inc. ("Belkin"); Monsoon Multimedia, Inc. ("Monsoon"); and C2 Microsystems, Inc. ("C2"). 78 FR 22899–900 (Apr. 17, 2013). The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

The Commission terminated the investigation with respect to Belkin based on a settlement agreement, and terminated the investigation with respect to Monsoon based upon default. *See* Order No. 4 (June 5, 2013), *not reviewed* July 5, 2013; *see* Order No. 7 (July 8, 2013), *not reviewed* Aug. 7, 2013.

On June 26, 2013, Sling moved for an order directing C2 to show cause why it should not be found in default for failure to respond to the Complaint and Notice of Investigation, and, upon failure to show cause, for the issuance of an initial determination finding C2 in default. On July 11, 2013, the ALJ ordered C2 to show cause why it should not be found in default. *See* Order No. 9. No response to Order No. 9 was filed.

On July 29, 2013, the ALJ issued the subject ID finding C2 in default under Commission Rule 210.16(a)(1). *See* Order No. 11. No petitions for review of the ID were filed. The Commission has determined not to review the subject ID.

C2 is the sole remaining respondent in this investigation. Section 337(g)(1) and Commission Rule 210.16(c) authorize the Commission to order relief against a respondent found in default, unless, after considering the public interest, it finds that such relief should not issue. Sling did not file a declaration stating that it was seeking a general exclusion order as provided in Commission Rule 210.16(c)(2).

In connection with the final disposition of this investigation, the Commission may: (1) Issue an order that could result in the exclusion of articles manufactured or imported by the defaulting respondents; and/or (2) issue a cease and desist order that could result in the defaulting respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors that the Commission will consider include the effect that the exclusion order and/or cease and desists orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions

concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant is also requested to submit proposed remedial orders for the Commission's consideration, to state the HTSUS numbers under which the accused products are imported, and to state the dates that the patents expire.

Written submissions and proposed remedial orders must be filed no later than close of business on August 30, 2013. Reply submissions must be filed not later than the close of business on September 6, 2013. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadline stated above and submit eight true paper copies to the Office of the Secretary pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337–TA–878") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted nonconfidential version of the document must also be filed simultaneously with any confidential filing. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: August 16, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–20428 Filed 8–21–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–832]

Certain Certain Ink Application Devices and Components Thereof and Methods of Using the Same; Commission Determination Not to Review an Initial Determination Finding Respondent T-Tech Tattoo Device Inc. in Default; Request for Submissions on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 5) finding respondent T-Tech Tattoo Device Inc. of Ontario, Canada ("T-Tech") in default.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 6, 2012, based on a complaint filed by MT.Derm GmbH of Berlin, Germany and Nouveau Cosmetique USA Inc. of Orlando, Florida (collectively "Complainants") alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink application devices and components thereof and methods of using the same by reason of infringement of certain claims of U.S. Patent Nos. 6,345,553 and 6,505,530. 77 FR 13351 (Mar. 6, 2012). The Commission's Notice of Investigation ("NOI") named T-Tech, Yiwu Beyond Tattoo Equipments Co., Ltd. of Yiwu City, China ("Yiwu"); and Guangzhou Pengcheng Cosmetology Firm of Guangzhou, China ("Guangzhou") as respondents. The Complaint was served on March 1, 2012. The Office of Unfair Import Investigations was named as a party. On June 29, 2012, the Commission determined not to review the portion of an ID (Order No. 7) finding Yiwu and Guanzhou Pengcheng in default pursuant to section 210.16 of the Commission's Rules of Practice and Procedure (19 CFR 210.16). Notice (June 29, 2012).

On March 20, 2013, Complainants filed a motion for summary determination of violation of section 337 against T-Tech. On March 28, 2013, T-Tech filed an opposition to the motion, but did not dispute any of the facts in Complainants' Statement of Undisputed Material Facts. On April 1, 2013, the Commission investigative attorney ("IA") filed a response supporting the motion in part.

On April 17, 2013, Complainants also filed a motion for an ID finding T-Tech in default pursuant to Commission Rule 210.17(e). On April 19, 2013, the ALJ issued Order No. 32, ordering T-Tech to show cause as to why it should not be found in default for failing to comply with deadlines set forth in the procedural schedule. On April 25, 2013, T-Tech filed an opposition to the motion. On April 29, 2013, the IA filed a response in support of the motion.

On July 17, 2013, the ALJ issued the subject ID (Order No. 35), granting-in-part Complainants' motion for summary determination of violation against T-Tech or, in the alternative, granting Complainants' motion for an ID finding T-Tech in default pursuant to section 210.17 of the Commission's Rules of Practice and Procedure (19 CFR 210.17). No party petitioned for review of the subject ID.

The Commission has determined not to review the portion of the subject ID finding T-Tech in default pursuant to Commission Rule 210.17. Complainants are not seeking a general exclusion order under section 337(d)(2) (19 U.S.C. 337(d)(2)) or section 337(g)(2) (19 U.S.C. 1337(g)(2)). The Commission, therefore, finds the portion of the ID granting

summary determination of violation of section 337 moot.

T-Tech is the last remaining respondent in this investigation, the other respondents, Yiwu and Guanzhou Pengcheng having previously been found in default. With respect to T-Tech, section 210.17 of the Commission's Rules of Practice and Procedure (19 CFR 210.17) states that a failure to participate in an investigation may provide a basis for a finding of violation of section 337 under section 337(d)(1) (19 U.S.C. 1337(d)(1)). With respect to Yiwu and Guanzhou Pengcheng, section 337(g)(1) (19 U.S.C. 1337(g)(1)) and section 210.16(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c)) authorize the Commission to issue relief against a respondent found in default.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843, Commission Opinion at 7–10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on August 30, 2013. Reply submissions must be filed no later than the close of business on September 6, 2013. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337–TA–832") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Issued: August 16, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–20429 Filed 8–21–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–499–500 and 731–TA–1215–1223 (Preliminary)]

Certain Oil Country Tubular Goods From India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam: Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam of certain oil country tubular goods, provided for primarily in subheadings 7304.29, 7305.20, and 7306.29 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV), and by imports of certain oil country tubular goods that are allegedly subsidized by the Governments of India and Turkey.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On July 2, 2013, a petition was filed with the Commission and Commerce by United States Steel Corporation, Pittsburgh, PA; Maverick Tube Corporation, Houston, TX; Boomerang Tube LLC, Chesterfield, MO; EnergeX, a division of JMC Steel Group, Chicago, IL; Northwest Pipe Company, Vancouver, WA; Tejas Tubular Products Inc., Houston, TX; TMK IPSCO, Houston, TX; Vallourec Star, L.P., Houston, TX; and Welded Tube USA, Inc., Lackawanna, NY, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of certain oil country tubular goods from India and Turkey and LTFV imports of certain oil country tubular goods from India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam. Accordingly, effective July 2, 2013, the Commission instituted countervailing duty investigation Nos. 701–TA–499–500 (Preliminary) and antidumping duty investigation Nos. 731–TA–1215–1223 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 10, 2013 (78 FR 41421). The conference was held in Washington, DC, on July 23, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 16, 2013. The views of the Commission are contained in USITC Publication 4422 (September 2013), entitled *Certain Oil Country Tubular Goods from India, Korea, the Philippines, Saudi Arabia, Taiwan; Thailand, Turkey, Ukraine, and Vietnam: Investigation Nos. 701–TA–499–500 and 731–TA–1215–1223 (Preliminary).*

Issued: August 16, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–20456 Filed 8–21–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Derricks Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Derricks Standard," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before September 23, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201306-1218-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend OMB authorization for information collections contained in the Derricks Standard of regulations 29 CFR 1910.181. The specified requirements are for marking the rated load on derricks, preparing certification records that verify the inspection of derrick ropes, and posting warning signs while the derrick is undergoing adjustments and repairs. Certification records must be maintained and disclosed upon request.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0222. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 9, 2013 (78 FR 21157).

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. It should also be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate

consideration, comments should mention OMB Control Number 1218–0222. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.
Title of Collection: Derricks Standard.
OMB Control Number: 1218–0222.
Affected Public: Private Sector—businesses or other for-profits.
Total Estimated Number of Respondents: 500.
Total Estimated Number of Responses: 7,757.
Total Estimated Annual Burden Hours: 1,356.
Total Estimated Annual Other Costs Burden: $0.

Dated: August 16, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–20418 Filed 8–21–13; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 13–098]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Attention: Desk Officer for the Office of NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, *Frances.C.Teel@nasa.gov*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection provides a means by which NASA contractors can voluntarily and confidentially report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

II. Method of Collection

The current, paper-based reporting system ensures the protection of a submitters anonymity and secure submission of the report by way of the U.S. Postal Service.

III. Data

Title: NASA Safety Reporting System.
OMB Number: 2700–0063.
Type of review: Extension of a currently approved collection.
Affected Public: Business or other for-profit.
Number of Respondents: 75.
Responses per Respondent: 1.
Annual Responses: 75.
Hours per Request: 15 min.
Annual Burden Hours: 19.
Frequency of Report: As needed.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2013–20518 Filed 8–21–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 13–097]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Attention: Desk Officer for the Office of NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be addressed to Ms. Frances Teel, JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports both the White House initiative to create opportunities to advance science, technology, engineering, and mathematics (STEM) education, and the President's Council of Advisors on Science and Technology (PCAST) *Engage to Excel* goals to improve STEM education during the first two years of college. The Department of Commerce estimates that STEM occupations will grow 1.7 times faster than non-STEM occupations between 2008—2018. As demographics

in the U.S. continue to shift towards a more diverse populous, there is a need to attract underserved and underrepresented students to STEM degree fields. Traditionally, underrepresented groups in STEM include females, African-American, Hispanics, Native Americans, Pacific Islanders (natives of the Philippines, Guam, American Samoa, or Micronesia), and disabled students.

The NASA Glenn Research Center (GRC) Shadowing and Exploring Project is a career exploration initiative targeting students in the 14–20 age groups. It connects classroom training to tangible activities that enable practical application of STEM disciplines, and cultivates innovative thinking. The program is designed to increase awareness of STEM career paths and encourage both the pursuit and retention of STEM majors during the initial years of college. The program incorporates GRC scientists, engineers, technicians, and administrative professionals to serve as mentors to participating students. The NASA Glenn Research Center Shadowing and Exploring Project Participation are voluntary and registration is required to participate.

II. Method of Collection

Electronic and Paper

III. Data

Title: NASA GRC Shadowing and Exploring

OMB Number: 2700–XXXX

Type of review: Existing Collection without OMB Approval

Affected Public: Individuals

Estimated Number of Respondents: 500

Estimated Time per Response: 0.5 hours

Estimated Total Annual Burden Hours: 250

Estimated Total Annual Cost: $39,552.51

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2013–20517 Filed 8–21–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 13- 099]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Friday, September 20, 2013, 1:30 p.m. to 3:30 p.m., Local Time.

ADDRESSES: This meeting will take place telephonically. Any interested person may call the USA toll free conference call number 800–857–7040, pass code ESS, to participate in this meeting by telephone.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–3094, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The primary topic on the agenda for the meeting is:- Earth Science program annual performance review according to the Government Performance and Results Act Modernization Act.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–20529 Filed 8–21–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is related to NCUA's Chartering and Field of Membership Manual (Chartering Manual) and is being published to obtain comments from the public. The Chartering Manual establishes requirements for organizing and amending a federal credit union (FCU) charter and field of membership (or FOM).

DATES: Comments will be accepted until October 21, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444. Requests for additional information about the Chartering Manual should be directed to Susan Ryan, NCUA Consumer Access Analyst, at the same address, in the NCUA Office

of Consumer Protection, Division of Consumer Access, (703) 518- 1150, *DCAMail@NCUA.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

The FCU Act establishes the rules for FCU chartering and field of membership. 12 U.S.C. 1753(5), 1754, 1759. The NCUA Board, after consideration of public comment, incorporated the Chartering Manual into NCUA's regulations at 12 CFR 701.1, and Appendix B to part 701, in 2008. 73 FR 73392, Dec. 2, 2008. NCUA most recently issued for public comment and amended the Chartering Manual in 2013. 78 FR 13460, Feb. 28, 2013.

NCUA is issuing this notice and request for comment on the reinstatement and amendment of the previously approved information collection PRA number related to the Chartering Manual, 3133–0015. Staff has incorporated into this collection other previously proposed, expired or combined information collections also related to the Chartering Manual, including 3133–0116 and 3133–0178. The collections are not new and the estimated amount of burden hours is based on NCUA's experience with this regulation and the current number of CUs. The amount is generally decreasing as a result of technology and the continuing trend of annual decreases in the number of CUs.

NCUA staff reviewed each of the four chapters and appendices of the Chartering Manual to identify all current information collection requirements. The four chapters are: One, FCU chartering; two, field of membership requirements for FCUs: three, low-income CUs and CUs serving underserved areas; and four, charter conversions; as well as related appendices. NCUA uses the information it collects pursuant to the Chartering Manual to regulate CUs' compliance with the FCU Act and NCUA regulations and to protect the safety and soundness of CUs and the National Credit Union Share Insurance Fund.

As a preliminary matter, those persons choosing to organize a new FCU must comply with certain information collection requirements upon starting the FCU outlined in this Chartering Manual. Over the past three years, organizers have established an average of approximately two new FCUs each year. We estimate each new FCU must spend approximately 160 hours to initially comply with the Chartering Manual's information collection requirements (ICR), for a total annual collection of 320 hours.

For current FCUs, NCUA staff also reviewed each chapter and appendices to the Chartering Manual to estimate current annual burden hours for CUs attached to each ICR. We have listed these estimates below in the Data section.

NCUA does not believe that CUs will incur any additional labor costs as a result of the Chartering Manual requirements since these are in accordance with the CUs' usual and customary business practices. The Chartering Manual addresses integral parts of a CU's operation as a member-owned, not-for-profit financial cooperative. Since a CU could not operate as a chartered and insured credit union without complying with these collections, there is no additional labor cost burden.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of any methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: NCUA Chartering and Field of Membership Manual, 12 CFR 701.1, and App. B to Part 701.

OMB Number: 3133–0015.

Form Numbers: NCUA Forms 4000, 4001, 4008, 4012, 4015, 4015–EZ, 4221, 4401, 4505, 4506, 9500, 9501, 9600.

Type of Review: reinstatement, with change.

Description: The NCUA Chartering and Field of Membership Manual sets forth the NCUA's current policies and procedures for granting and permitting change to a federal credit union charter.

Estimated No. of Respondents/ Recordkeepers: 9,990.

Frequency of Response: Recordkeeping, reporting and on occasion.

Estimated Total Annual Hours Requested: 15,397.5.

Estimated Total Annual Cost: N/A.

Specifically, NCUA Staff identified the following chapters and appendices as containing ICRs with the following number of respondents and the estimated annual burden in hours, as follows:

Chapter 1. FCU Chartering

ICRs: Business Plan for New Charters, Wording for Proposed FOM, NCUA Forms 4001, 4008, 4012, 9500, 9501.

Respondents/record-keepers: 2 per year.

Estimated annual burden: 160 hours.

Total annual hours: 320 hours.

ICRs related to the Chartering Manual for All FCUs:

Chapter 2. Field of Membership Requirements for FCUs

ICR: Single Common Bond and Multiple Common Bond Amendments, NCUA Forms 4015 and 4015–EZ, and FOM Internet Application (FOMIA).

Respondents: 9,915.

Estimated annual burden: 30 minutes.

Total annual hours: 4,957.5.

ICR: Community Charter Conversion and Expansion Applications.

Respondents: 39.

Estimated annual burden: 160 hours.

Total annual hours: 6,240.

Chapter 3. Low-Income CUs and CUs Serving Underserved Areas

ICR: Application to Add an Underserved Area.

Respondents: 21.

Estimated annual burden: 160 hours.

Total annual hours: 3,360.

Chapter 4. Charter Conversions

ICR: NCUA Forms 4000, 4221, 4401, 4505, 4506, 9500, 9501, 9600.

Respondents/record-keepers: 13.

Estimated annual burden: 40 hours.

Total annual hours: 520.

By the National Credit Union Administration Board on August 16, 2013.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–20478 Filed 8–21–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget

(OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. NCUA requires this information collection to comply with the Depository Institution Management Interlocks Act (Interlocks Act) and to determine federally insured credit unions' compliance with NCUA's Management Official Interlocks regulation at 12 CFR Part 711.

DATES: Comments will be accepted until October 21, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov*.

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444. For information about the Interlocks Act and NCUA's regulation at Part 711, please contact NCUA's Office of General Counsel at (703) 518–6540 or *ogcmail@ncua.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is reinstating its OMB collection number 3133–0152 for its Management Official Interlocks regulation, 12 CFR part 711, which implements the Interlocks Act for federally insured credit unions. The Interlocks Act generally prohibits financial institution management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies. 12 U.S.C. 3201–3208. For credit unions, the Interlocks Act restricts interlocks between credit unions and other types of financial institutions, not between two or more credit unions. 12 U.S.C. 3204(3). NCUA last substantively revised 12 CFR part 711 in 1999, as part of a coordinated interagency effort with other federal financial regulatory agencies. 64 FR 66356–66360, Nov. 26, 1999.

NCUA finds information collection burdens associated with this regulation still apply and is reinstating this OMB collection number 3133–0152. The information collections associated with Part 711 are as follows.

- Under § 711.3, a credit union may have to maintain records to determine whether the major assets prohibition applies.
- Under § 711.4(h)(1)(i), a credit union must notify NCUA to obtain approval to have a director in common with a diversified savings and loan holding company.
- Under § 711.5, a credit union may have to maintain records to comply with the small market share exemption.
- Under § 711.6(a), a credit union seeking a general exemption to a management official interlocks prohibition in § 711.3 would have to compile information and submit an application to NCUA for approval.

The NCUA requests that you send your comments on this collection to the location(s) listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Management Official Interlocks, 12 CFR Part 711.

OMB Number: 3133–0152.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection.

Description: NCUA's management official interlocks regulation at 12 CFR part 711 directs federally insured credit unions having a common management official with another type financial institution to compile and maintain records and, in some cases, submit an application to NCUA for a general exemption to certain prohibitions, or otherwise obtain NCUA approval.

Respondents: All federally insured credit unions.

Estimated No. of Respondents/Recordkeepers: 2.

Estimated Burden Hours per Response: 3 hours.

Frequency of Response: Recordkeeping; upon application and reporting.

Estimated Total Annual Burden Hours: 6.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on August 16, 2013.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–20482 Filed 8–21–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of permit applications received under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 23, 2013. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood; ACA Permit Officer; at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to

designate Antarctic Specially Protected Areas.

Application Details

1. Applicant

Jennifer Martin, Brooklyn, New York.

Permit Application: 2014–008.

Activity for Which Permit Is Requested: ASPA Entry; The applicant seeks permission to enter several McMurdo Sound Area ASPAs to observe the natural environment, scientists working in the field and the historic huts in order to gain inspiration and insight for a poetry collection. The applicant will record her observations using pen and paper, small video camera, small still-camera, and laptop or tablet computer.

Location: ASPA 121 Cape Royds; ASPA 157 Backdoor Bay; ASPA 155 Cape Evans; ASPA 158 Discovery Hut; ASPA 131 Canada Glacier; ASPA 172 Blood Falls.

Dates: November 7, 2013 to December 31, 2013.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–20473 Filed 8–21–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0196]

State of Georgia Relinquishment of Sealed Source and Device Evaluation and Approval Authority

AGENCY: Nuclear Regulatory Commission.

ACTION: Relinquishment of state regulatory authority and reassertion of NRC authority.

SUMMARY: Notice is hereby given that effective August 20, 2013, the U.S. Nuclear Regulatory Commission (NRC) has assumed regulatory authority to evaluate and approve sealed source and device (SS&D) applications in the State of Georgia and approved the Governor of the State of Georgia's request to relinquish this authority.

DATES: The NRC has assumed regulatory authority for evaluating and approving sealed source and device applications on August 20, 2013.

ADDRESSES: Please refer to Docket ID NRC–2013–0196 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0196. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual 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.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Stephen Poy, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7135; email: *Stephen.Poy@nrc.gov.*

SUPPLEMENTARY INFORMATION: Section 274b. of the Atomic Energy Act of 1954 as amended (AEA), provides the NRC authority to enter into agreements with States so they can assume, and the NRC can relinquish regulatory authority over, specified AEA radioactive materials and activities. On December 15, 1969, Georgia entered into a Section 274b. Agreement with the Atomic Energy Commission (the predecessor regulatory agency to the NRC) to regulate source, byproduct, and special nuclear material in quantities not sufficient to form a critical mass. Currently, the State of Georgia has an Agreement with the NRC which recognizes the State's regulatory authority to evaluate and approve SS&D applications.

On June 5, 2013, the NRC received a letter from Georgia Governor Nathan Deal (ADAMS Accession No. ML13165A092) requesting to relinquish the State's regulatory authority to evaluate and approve SS&D applications, and asking the NRC to assume regulatory authority over this program.

The Governor of Georgia stated that it has become increasingly challenging for Georgia to recruit and retain the personnel necessary to perform the specialized SS&D activities, and concluded that it is in the best interest of the State to return regulatory authority to evaluate and approve SS&D applications to the NRC in order to focus more attention and resources on the primary areas of the State's radioactive materials program. The State of Georgia currently has 15 manufacturers with 77 active SS&D sheets in the national registry.

The Commission approved the request (ADAMS Accession No. ML13219A293) and has notified the State of Georgia that effective August 20, 2013, the NRC has assumed authority to evaluate and approve sealed source and device applications within the State (ADAMS Accession No. ML13221A153).

The State of Georgia will retain authority to regulate the manufacture and use of sealed sources and devices within the State in accordance with its Section 274b. Agreement with the NRC.

Dated at Rockville, Maryland, this 16th day of August, 2013.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Director, Office of Federal and State Materials, and Environmental Management Programs.

[FR Doc. 2013–20494 Filed 8–21–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7018; NRC–2013–0115]

Notice of Acceptance of Renewal Application for Special Nuclear Materials License From Tennessee Valley Authority for Watts Bar Nuclear Power Plant, Unit 2, Opportunity To Request a Hearing, and Petition for Leave To Intervene, and Commission Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of acceptance of the license renewal application, opportunity to request a hearing and to petition for leave to intervene; order.

DATES: Requests for a hearing and petitions for leave to intervene must be filed by October 21, 2013. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to sensitive

unclassified non-safeguards information (SUNSI) is necessary to respond to this notice must request document access by September 3, 2013.

ADDRESSES: Please include Docket ID NRC–2013–0115 in any response to this notice. You may access publicly-available information related to the license renewal application using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0115. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individuals 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*. The public version of the Watts Bar Nuclear Power Plant, Unit 2, license renewal application, dated August 23, 2012, is available electronically under ADAMS Accession No. ML12264A545. The February 7, 2013, acceptance letter from NRC's staff is available electronically under ADAMS Accession No. ML13038A616.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Marilyn Diaz, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9068, email: *Marilyn.Diaz@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated August 23, 2012, a license renewal application (the Application) from the Tennessee Valley Authority (TVA), regarding its 10 CFR part 70 special nuclear material (SNM) license for Watts Bar Nuclear Power Plant, Unit 2 (WBN2), located at Spring City, Tennessee. An NRC administrative review, documented in a letter to the TVA dated February 7, 2013 (ADAMS Accession No. ML13038A61), found the Application acceptable to begin a technical review. The NRC has accordingly docketed the Application as Docket No. 70–7018. License No. SNM–2014 authorizes the licensee to receive, possess, inspect and store an initial core of SNM in the form of fresh fuel assemblies. License No. SNM–2014 has an expiration date of June 30, 2013, but in accordance with 10 CFR 70.38(a) the existing license does not expire unless the NRC later makes a final decision to deny the pending renewal application.

The TVA requested a license renewal to allow additional time to complete the engineering, construction, and testing necessary to obtain a 10 CFR part 50 operating license for WBN2. The TVA also submitted a separate request to the NRC dated May 17, 2012 (ADAMS Accession No. ML12143A346) for extension of its Construction Permit for WBN2 to September 30, 2016. Therefore, the TVA is requesting an expiration date of September 30, 2016, for License No. SNM–2014 to match its Construction Permit.

Before approving the Application, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations. These findings will be documented in a Safety Evaluation Report (SER), and the NRC will also conduct an environmental review of the Application.

II. Opportunity To Request a Hearing and Petitions for Leave To Intervene

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, petitions to intervene, requirements for standing, and contentions," which is available at the NRC's PDR, located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737). The NRC's regulations are also accessible electronically from the NRC's Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*.

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and/or petition for leave to intervene in accordance with 10 CFR 2.309(a). As required by 10 CFR 2.309(d), any such request or petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A request for hearing or petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. Under 10 CFR 2.309(f), each contention must contain a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner also must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings that the NRC must make to support the granting of a license renewal in response to the Application. The petitioner must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner, and on which the petitioner intends to rely at the hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the Application that the petitioner disputes and the supporting reasons for each dispute; or, if the petitioner believes that the Application fails to contain information on a relevant matter as required by law, the identification of each failure, and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC's regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary

hearings, and the appropriate notices will be provided.

Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the deadline in 10 CFR 2.309(b) will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

A State, county, municipality, Federally-recognized Indian tribe, or agencies thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by October 21, 2013. The petition must be filed in accordance with the filing instructions in Section III of this notice, and should meet the requirements summarized above, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by October 21, 2013.

III. Electronic Submissions (E-Filing)

All documents filed in NRC's 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(h), 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 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 on this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's, "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a petitioner/requestor has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing and petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-filing system. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m., Eastern Standard Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-filing system also distributes an Email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a 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: Rulemakings 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: Rulemakings 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. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. 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.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 16th day of August 2013.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of acceptance of application and opportunity to request a hearing, and to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2013–20493 Filed 8–21–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–77; Order No. 1812]

Change in Postal Rates

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently Postal Service filing concerning the Postal Service's intention to change rates for Inbound International Expedited Services 2. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 23, 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: *Notice of filing.* The Commission hereby provides notice that on August 15, 2013, the Postal Service filed a Notice, pursuant to 39 CFR 3015.5, announcing its intention to change rates for Inbound International Expedited Services 2, effective January 1, 2014.[1] The Notice includes classification changes to Inbound Express Mail International (EMS). *Id.* at 2–3.

Representations. The Postal Service states that Governors' Decision Nos. 08–20 and 11–6 establish prices and classifications for this product and identify subsequent dockets addressing price changes. *Id.* at 1–2. It asserts that the new rates for Inbound EMS 2 are in compliance with the requirements of 39 U.S.C. 3633(a)(2) and that it has met its burden of providing notice to the Commission of changed rates within the scope of Governors' Decision Nos. 08–20 and 11–6, as required by 39 U.S.C. 3632(b)(3). *Id.* at 7.

Attachments. The Postal Service filed six attachments as follows:

[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability and Changes to Product Description for Inbound EMS 2, August 15, 2013 (Notice).

- Attachment 1—an application for non-public treatment of materials filed under seal;
- Attachments 2A and 2B—redacted copies of Governors' Decision Nos. 08–20 and 11–6;
- Attachment 3—a redacted set of the new rates;
- Attachment 4—a certification addressing costs and prices;
- Attachments 5A through 5E—redacted copies of the EMS Cooperative CY2012 Report Card and the EMS Cooperative quarterly report cards for CY2012;
- Attachment 6—changes to the Inbound EMS product description in the Mail Classification Schedule.

Public portions of the Postal Service's filing can be accessed via the Commission's Web site (*http://www.prc.gov*). Access to non-public documents is governed by 39 CFR part 3007.

Proceedings. The Commission establishes Docket No. CP2013–77 for consideration of matters raised by the Notice. Pursuant to 39 U.S.C. 505, it appoints Manon A. Boudreault to serve as officer of the Commission (Public Representative) representing the interests of the general public in these proceedings.

Interested persons may submit comments on whether the changes announced in the Notice are consistent with 39 U.S.C. 3632, 3633, 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than August 23, 2013. Comments are to be submitted via the Commission's Filing Online system at *http://www.prc.gov* unless a waiver is obtained. Information on how to obtain a waiver may be found by contacting the Commission's docket section at 202–789–6846.

It is ordered:

1. The Commission establishes Docket No. CP2013–77 for consideration of the Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability and Changes to Product Description for Inbound EMS 2, filed August 15, 2013.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Manon A. Boudreault to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than August 23, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–20453 Filed 8–21–13; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission held a Closed Meeting on Friday, August 16, 2013 at 12:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the Closed Meeting. Certain staff members who had an interest in the matter also were present.

The General Counsel of the Commission, or her designee, 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), permitted consideration of the scheduled matter at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the item listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting was: Settlement of injunctive actions.

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: August 19, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–20576 Filed 8–20–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70224; File No. SR–BOX–2013–41]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Continuing Education for Registered Persons

August 16, 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 August 14, 2013, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 2040 (Restrictions) regarding continuing education for registered persons. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend BOX Rule 2040 (Restrictions) to specify the different Continuing Education

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

("CE") requirements for registered persons based upon their registration with the Exchange. This change will authorize the Exchange to administer different CE programs to differently registered individuals while bringing clarity to Options Participants about what CE requirement they must fulfill. More specifically, the Exchange is proposing to: (1) Adopt the Series 501 Proprietary Trader Continuing Education Program, and (2) enumerate the required Regulatory Element programs.

Background

Currently, Exchange Rule IM–2040–5(b)[3] states that that "each Representative or Principal registered with the Exchange shall complete the Regulatory Element of the Continuing Education requirement".[4] Exchange Rule IM–2040–5(b) further states that "the content of the Regulatory Element shall be determined by the Exchange and shall be appropriate to either the registered representative or principal status of persons subject to this IM–2040–5". The Regulatory Element is a computer-based education program administered by the Financial Industry Regulatory Authority ("FINRA") to help ensure that registered persons are kept up to date on regulatory, compliance and sales practice matters in the industry. Currently, there are two Regulatory Element programs that BOX recognizes: the S201 Supervisor Program for registered principals and supervisors; and the S101 General Program for Series 7 and all other registered persons. The Exchange is proposing to enumerate these programs in the Exchange Rulebook along with adding the S501 Series 56 Proprietary Trader Continuing Education Program for Series 56 registered persons.

Introduction of the Proprietary Trading Continuing Education Program

The Exchange is proposing to introduce a new CE Program for Proprietary Traders registered with the Exchange who have successfully completed the Proprietary Traders Examination ("Series 56") and who have no other registrations. Exchange Rule 2020(b)(2) outlines the registration and qualification requirements (including prerequisite examinations) for Limited Representatives—Proprietary Traders. Each person associated with a Participant who is included within the definition of Representative may register as a Limited Representative—Proprietary Trader if his activities in the investment banking or securities business are limited solely to proprietary trading; and he passes the appropriate Qualification Examination for Limited Representative—Proprietary Trader, the Series 56; and he is an associated person of a proprietary trading firm.[5]

The Proprietary Trader Continuing Education Program (S501) is a computer-based education program developed by many of the self-regulatory organizations ("Participating SROs")[6] to ensure that registered persons are kept current on regulatory, compliance and trading practice matters in the industry. Unlike the other offered CE Programs, the Proprietary Trader Continuing Education Program is not part of the Uniform Continuing Education Program, which is developed and maintained by the Securities Industry Regulatory Council on Continuing Education.

The Proprietary Trader Continuing Education Program will logistically operate as the currently offered CE Programs do. Specifically, registered persons will be required, through CRD, to complete the Regulatory Element of the CE on the second anniversary of the base date and then every three years thereafter. While creating the S501, the Participating SROs believed that the current procedures of the other CE programs work well. The Securities Industry Regulatory Council on Continuing Education has tailored the process of the other CE Programs since its inception to a process that has been successful. Thus, as proposed, the S501 will work in the same manner. In addition, consistency between the different programs will avoid creating confusion amongst the registered persons and FINRA.

The Proprietary Trader Continuing Education Program (S501) is required for those registrants who registered as Proprietary Traders by passing the Series 56 and do not maintain any other registration through CRD.[7] Individuals that are registered under any other registration are required to maintain the CE obligations associated with those registrations.

For example, an individual that is registered as a Proprietary Trader with the Exchange yet continues to maintain a Series 7 registration will be required to continue taking the Series 7 Continuing Education Program (S101).[8] Though such individual may be engaging in the same capacity as one registered as a Proprietary Trader, because the Series 7 Examination is a more comprehensive exam of topics not covered on the Series 56, the Exchange believes that this individual continuing to maintain a Series 7 registration should complete a CE that covers all aspects of his or her registration.

The introduction of the Proprietary Trader Continuing Education Program allows the Exchange to tailor its CE requirements more closely to those registered individuals who are registered as Series 56. More specifically, the Exchange believes allowing individuals engaging in proprietary trading and registered under the Series 56 to complete a separate CE Program than those maintaining a Series 7 registration is appropriate as all individuals have the option of taking either test. In comparison to the Series 7, the Series 56 Examination is more closely tailored to the practice of proprietary trading while the Series 7 is more comprehensive. As such, the Exchange believes a Series 56 CE Program should be tailored as well. At the same time, if an individual would like to remain registered as a Series 7, the Exchange believes it is appropriate they continue to be required to complete the broader CE program. As stated above, though an individual maintaining a Series 7 registration may be engaging in the same capacity as one registered as a Proprietary Trader, because the Series 7 Examination is a

[3] *See* Exchange Rule IM–2040–5(b).

[4] *Id.*

[5] *See* Exchange Rule 2020(b)(2)(i). Under Exchange Rule 2020(e)(2) a proprietary trading firm is a Participant that trades its own capital, that does not have customers, and that is not a member of the Financial Industry Regulatory Authority. In addition, to qualify for this definition, the funds used by a proprietary trading firm must be exclusively firm funds, all trading must be in the firm's accounts, and traders must be owners of, employees of, or contractors to the firm.

[6] The Participating SROs that have assisted with the development of, and plan to administer, the Series 56 and S501 are the Exchange, Chicago Board Options Exchange, Incorporated ("CBOE"), C2 Options Exchange, Incorporated ("C2"), the Chicago Stock Exchange, Inc. ("CHX"), the New York Stock Exchange, LLC ("NYSE"), NYSE Arca, Inc. ("Arca"), NYSE Amex, LLC ("Amex"), the NASDAQ Stock Market LLC ("NASDAQ"), the National Stock Exchange, Inc. ("NSX"), NASDAQ OMX BX, Inc. ("BX"), NASDAQ OMX PHLX, LLC ("PHLX"), BATS Y-Exchange, Inc. ("BATS Y"), BATS Exchange, Inc. ("BATS"), EDGA Exchange, Inc. ("EDGA"), EDGX Exchange, Inc. ("EDGX"), Miami International Securities Exchange, LLC ("MIAX") and International Securities Exchange, LLC ("ISE").

[7] Any registered person who receives a waiver of the Series 56 under Exchange Rule IM–2040–2, and does not maintain any other registrations in CRD, will be required to complete the Proprietary Trader Continuing Education Program (S501).

[8] If a registered person has received a Series 56 waiver under Exchange Rule IM–2040–2 but continues to maintain a Series 7 registration (that predates the introduction of the Series 56 on the Exchange) that registered individual will be required to continue taking the Series 7 CE Program (S101). Through CRD, FINRA will recognize the Series 56 as waived while still requiring the Series 7 CE completion.

more comprehensive exam of topics not covered on the Series 56, the Exchange believes that such individual that continues to maintain a Series 7 registration should complete a CE that covers all aspects of his or her registration.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(c) of the Act,[9] in general, and furthers the objectives of Section 6(c)(3) of the Act,[10] which authorizes the Exchange to prescribe standards of training, experience and competence for persons associated with the Exchange Options Participants, in that the proposed rule codifies the existing requirements for Exchange Options Participants and their Representatives. The proposed rule also introduces a new CE program for Series 56 registered persons. The Exchange believes the proposed changes are reasonable and set forth the appropriate CE requirements for an Options Participant's Representative or Principal who is required to register under Exchange Rule IM–2040–5.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the Exchange notes that the rule change is being proposed in response to a filing recently submitted by the CBOE.[11] The Exchange does not believe that the administrative changes being made nor the introduction of the Proprietary Trader Continuing Education Program (S501) will affect intermarket competition as the Exchange believes all Exchanges offering the same CE requirements will file similar rules addressing those CE Programs. In addition, the Exchange does not believe the proposed changes will affect intramarket competition because all similarly situated registered persons, *e.g.* registered persons maintaining the same registrations, are required to complete the same CE requirements. For example, all individuals maintaining a Series 7 registration will be required to complete the Series 7 CE while all individuals maintaining a Series 56 registration (and no other registrations) will be required to complete the new Series 56 CE.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The rule change specifies that proprietary traders who have qualified by taking the Series 56 exam must take the S 501 continuing education program. Waiver of the operative delay will enable those registered persons required to take the S 501 continuing education to do so as soon as the program becomes available, enabling them to comply with their continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2013–41 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–BOX–2013–41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–41 and should be submitted on or before September 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20462 Filed 8–21–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(c).

[10] 15 U.S.C. 78f(c)(3).

[11] *See* Securities Exchange Act Release No. 70027 (July 23, 2013), 78 FR 45584 (July 29, 2013) (SR–CBOE–2013–076) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Continuing Education).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70225; File No. SR–OCC–2013–13]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Use of Manual Signatures, Reduction of Segregated Long Positions in Accounts With Aggregated Long Positions, Requirements To Be Physically Present, and Other Technical Changes to OCC's By-Laws and Rules to Better Reflect Current Operational Practices

August 16, 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 August 5, 2013, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to make certain non-material "housekeeping" changes so that OCC's By-Laws and Rules (collectively, "Rules") better reflect current operational practices.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of this proposed rule change is to make non-material "housekeeping" changes to certain OCC's Rules so that OCC's Rules better reflect current operational practices. For example, Rule 201 requires a representative of each clearing member to sign all instruments necessary to conduct business with OCC and applies to items such as trade data and banking instructions. Manual signatures on such instruments were a means by which OCC and its clearing members verified and validated information contained therein. However, since the adoption of Rule 205, which requires clearing members to electronically submit items to OCC, and Rule 212, which allows OCC to assign clearing members access codes for electronic data entry,[3] the requirement for manual signatures has been virtually eliminated. OCC proposes to remove references to manual signatures within Rule 201 because OCC has adopted and implemented electronic processes and controls within its clearance and settlement systems to allow authorized individuals to electronically verify and validate information such as trade data and banking instructions. Such processes and controls are used by all OCC clearing members.

Rule 202 requires each clearing member to file with OCC a certified list of representatives who are authorized to conduct business with OCC, including individuals authorized to sign, "certificates, checks, receipts, and orders." As with manual signatures on trade data and banking instructions, OCC's electronic systems, and its Rules related thereto, have made the need for manual signatures on certificates, checks, receipts and orders superfluous and OCC proposes that references to manual signatures on such documents be removed. Even though OCC proposes to remove certain references to manual signatures, as described above, OCC still needs to know the individuals authorized to act on behalf of each of its clearing members and OCC will continue to require clearing members to provide OCC with a list of individuals authorized to act on behalf of each such clearing member.[4] In turn, OCC will provide such authorized individuals with the appropriate electronic access to its clearance and settlement systems. Moreover, the description in Rule 611(c) regarding how OCC reduces segregated and unsegregated long positions is not consistent with the current functionality in OCC's clearance and settlement systems. OCC proposes to amend Rule 611(c) so that it better reflects the current practice that, in the event of a closing transaction or exercise in an account with aggregate long positions, segregated long positions are reduced before unsegregated long positions, and that clearing members may not choose an alternative reduction method.

OCC also has provisions in several rules that were implemented before industry-wide adoption of technological advancements in remote access capability. For example, Rule 201 requires that an authorized representative of a clearing member be present in such clearing member's office during specific hours each day. Advancements in technology, such as remote computer access, have rendered the requirement to have a clearing member representative physically present in a clearing member's office overly burdensome and unnecessary. Moreover, regulatory requirements pertaining to business continuity planning and disaster recovery have required OCC and its clearing members to adopt decentralized operational structures and, as a result, remote access has become integrated into OCC's and its clearing members' daily operations. Therefore, OCC proposes to amend the "physically present" requirement in Rule 201 to require an authorized representative of a clearing member be available during such times as OCC may specify from time to time as well as unify the requirements of Rule 201 so that both Non-U.S. Clearing Members and U.S. Clearing Members are subject to the same authorized representative availability standard. OCC also proposes to add clarifying language to Rule 204 so that in the event OCC processes transactions through it backup processing facility clearing members do not need to make a purely administrative designation of such backup facility as its primary clearing office.

Finally, OCC proposes additional amendments to Rules 207, 208 and 611(b) to reflect non-material changes: To the names of, information contained within and manner in which clearing members may amend various reports; to Rule 611(b) to clarify that clearing members may electronically submit instructions to OCC regarding their segregated long positions; to remove references to clearing international transactions and the International Clearing System, a dormant system, found in By-Laws Articles I and VI as well as Rule 801; to remove references

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC Rule 212 also requires clearing members to take appropriate precautions to protect the security of their access codes and prevent unauthorized use thereof.

[4] OCC also proposes to make conforming changes to its clearing member authorized representative form, which each clearing member must complete and submit to OCC so that OCC knows the persons authorized to act on behalf of such clearing member. Such changes are attached hereto as Exhibits 3A–3D. Moreover, in the event of unusual or unforeseen circumstances, manual signatures on documents serve as a backup way to authenticate instructions and documents submitted to OCC.

to XMI index options, which are no longer traded, found in By-Laws Article VI and Rule 801; to amend Rule 801 so that OCC, and not its Board of Directors, may choose exercise notices that are not eligible for late processing; and, to add language to Rule 211 so that OCC satisfies its Rule 211 requirement to provide notice to clearing members and other registered clearing agencies of rule changes by posting such filings on its public Web site.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F)[5] of the Act[6] because it facilitates the prompt and accurate clearance and settlement of securities transactions. The proposed changes will update OCC Rules to better reflect the current operational and technological environment of OCC and its clearing members by removing outdated requirements and references within OCC's Rules. The proposed rule change is not inconsistent with any rules of OCC, including those proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impact, or impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes, which will apply to all clearing members, are administrative in nature and will better align OCC's Rules with both its own and its clearing members current operational practices. Accordingly, the proposed changes will reduce unnecessary administrative burdens on its clearing members, including any such burdens that may impact competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2013–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–OCC–2013–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site: *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_13.pdf*.

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–OCC–2013–13 and should be submitted on or before September 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20463 Filed 8–21–13; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78a et seq.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70220; File No. SR–CME–2013–15]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Benchmark Used in Connection With Settling CME Palm Oil Futures and CME Palm Oil Swaps

August 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 2013, Chicago Mercantile Exchange Inc. ("CME") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared primarily by CME. 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

CME is filing proposed rule changes that are limited to its business as a derivatives clearing organization. More specifically, the proposed rule changes would make amendments to its rules regarding the USD/MYR foreign exchange benchmark used in connection with the settlement of U.S. Dollar Cash Settled Crude Palm Oil Futures ("CME Palm Oil Futures") and USD Malaysian Crude Palm Oil Calendar Swaps (Cleared Only) ("CME Palm Oil Swaps").

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission and currently offers clearing services for many different futures and swaps products. With this filing, CME proposes to make amendments to its rules regarding the USD/MYR foreign exchange benchmark used in connection with the settlement procedures for the U.S. Dollar Cash Settled Crude Palm Oil Futures ("CME Palm Oil Futures") and USD Malaysian Crude Palm Oil Calendar Swaps (Cleared Only) ("CME Palm Oil Swaps"). Although these changes will be effective on filing, CME plans to operationalize the new USD/MYR benchmarks for CME Palm Oil Futures and CME Palm Oil Swaps on August 6, 2013.

Currently, the settlement prices for CME Palm Oil Futures and CME Palm Oil Swaps are based off Bursa Malaysia Crude Palm Oil Futures ("BM CPO Futures"), which are traded in Malaysian Ringgit. Settlements for the CME Palm Oil Futures and CME Palm Oil Swaps are determined by converting the BM CPO Futures settlement prices into U.S. dollars using the Association of Banks in Singapore ("ABS") 11:00 a.m. spot USD/MYR fixing. On July 5, 2013, ABS announced that it would discontinue publication of this spot FX fixing after August 5, 2013. ABS has recommended that the market settle its USD/MYR transactions going forward using the onshore USD/MYR Spot Rate reported by Persatuan Pasaran Kewangan Malaysia ("PPKM"). The PPKM USD/MYR Spot Rate is also the USD/MYR rate reported by the Bank Negara Malaysia, which requires all licensed onshore banks to reference this rate when pricing all foreign exchange contracts involving Malaysian Ringgit.

Given ABS's sudden decision to discontinue publishing its USD/MYR FX fixing, CME plans to begin using the PPKM USD/MYR Spot Rate beginning August 6, 2013. CME must implement this change in order to continue to provide settlement prices for CME Palm Oil futures and swaps.

The changes that are described in this filing are limited to CME's business as a derivatives clearing organization clearing products under the exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC") and do not materially impact CME's credit default swap clearing business in any way. CME notes that it has already submitted the proposed rule changes that are the subject of this filing to its primary regulator, the CFTC, in CME Submission 13–296 and 13–297.

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act.[3] The proposed rule changes are necessary to facilitate CME's futures and swaps product offering, and as such are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.[4] Furthermore, the proposed changes are limited in their effect to futures and swaps products offered under CME's authority to act as a derivatives clearing organization. These products are under the exclusive jurisdiction of the CFTC. As such, the proposed CME changes are limited to CME's activities as a derivatives clearing organization clearing swaps that are not security-based swaps; CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed changes are limited in their effect to futures and swaps products offered under CME's authority to act as a derivatives clearing organization, the proposed changes are properly classified as effecting a change in an existing service of CME that:

(a) Primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, and swaps that are not security-based swaps or mixed swaps; and

(b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service.

As such, the changes are therefore consistent with the requirements of Section 17A of the Exchange Act[5] and are properly filed under Section 19(b)(3)(A)[6] and Rule 19b–4(f)(4)(ii)[7] thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The rule changes simply announce mandatory changes that are necessary to ensure settlement of existing CME futures and swap products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from 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)[8] of the Act and paragraph (f)(4)(ii) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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:

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(4)(ii).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(4)(ii).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CME–2013–15 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–CME–2013–15. 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 or 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html*.

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–CME–2013–15 and should be submitted on or before September 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20461 Filed 8–21–13; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8433]

Designation of Mohamed Lahbous, also known as Lahbous Mohamed, also known as Mohamed Ennouini, also known as Hassan, also known as Hocine, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Mohamed Lahbous, also known as Lahbous Mohamed, also known as Mohamed Ennouini, also known Hassan, also known as Hocine, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: August 7, 2013.

John F. Kerry,

Secretary of State.

[FR Doc. 2013–20522 Filed 8–21–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet October 29, 2013 from 8:30 a.m. to 5:00 p.m. The Charting Group will meet October 30 and 31, 2013 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be hosted by the Air Line Pilots Association at 535 Herndon Parkway, Herndon, VA 20192.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; Email: *thomas.e.schneider@faa.gov*.

For information relating to the Charting Group, contact Valerie S. Watson, FAA, National Aeronautical Navigation Products (AeroNav Products), Quality Assurance & Regulatory Support, AJV–3B, 1305 East-West Highway, SSMC4, Station 3409, Silver Spring, MD 20910; telephone: (301) 427–5155; Email: *valerie.s.watson@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from October 29 through October 31, 2013, from 8:30 a.m. to 5:00 p.m. at the Air Line Pilots Association, at their offices at 535 Herndon Parkway, Herndon, VA 20192.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, and new aeronautical charting and air traffic control initiatives. Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by October 9, 2013, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section not later than October 9, 2013.

Public statements will only be considered if time permits.

Issued in Washington, DC, on August 15, 2013.

Valerie S. Watson,

Co-Chair, Aeronautical Charting Forum.

[FR Doc. 2013–20450 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0015]

2013 Temporary Closure of I–395 Just South of Conway Street in the City of Baltimore to Vehicular Traffic To Accommodate the Construction and Operation of the Baltimore Grand Prix

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final notice.

SUMMARY: The FHWA has approved a request from the Maryland Transportation Authority (MDTA) to temporarily close a portion of I–395 (just south of Conway Street in Baltimore City) from approximately 7 p.m. on Wednesday, August 28, 2013, until approximately 6 a.m. on Tuesday, September 3, 2013. The closure is requested to accommodate the construction and operation of the Baltimore Grand Prix (BGP), which will use the streets of downtown Baltimore as a race course.

The approval is granted in accordance with the provisions of 23 CFR 658.11 which authorizes the deletion of segments of the federally designated routes that make up the National Network designated in Appendix A of 23 CFR Part 658. The FHWA published a Notice and Request for Comment on May 13, 2013, seeking comments from the general public on this request submitted by the MDTA for a deletion in accordance with 23 CFR 658.11(d). No comments were received.

DATES: *Effective Date(s):* This Notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Ms. Crystal Jones, Office of Freight Management and Operations, Office of Operations, (202) 366–2976, Mr. Bill Winne, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, and Mr. Gregory Murrill, FHWA Division Administrator—DELMAR Division, (410) 962–4440. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may retrieve a copy of the Notice and Request for Comment, comments submitted to the docket, and a copy of this final notice through the Federal eRulemaking portal at: *http://www.regulations.gov*. The Web site is available 24 hours each day, every day of the year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov*.

Background

The MDTA submitted a request to the FHWA for approval of the temporary closure of I–395 just south of Conway Street in the city of Baltimore from the period beginning Wednesday, August 28, at approximately 7 p.m. through Tuesday, September 3, at around 6 a.m., encompassing the Labor Day holiday. This closure will be undertaken in support of the BGP which will use the streets of downtown Baltimore as a race course. The MDTA is the owner and operator of I–395 and I–95 within the city of Baltimore.

The FHWA is responsible for enforcing the Federal regulations applicable to the National Network of highways that can safely and efficiently accommodate the large vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982, as amended, designated in accordance with 23 CFR Part 658 and listed in Appendix A. In accordance with 23 CFR 658.11, the FHWA may approve deletions or restrictions of the Interstate system or other National Network route based upon specified justification criteria in section 658.11(d)(2). Requests for deletions are published in the **Federal Register** for notice and comment.

Notice and Request for Comment

The FHWA published a Notice and Request for Comment on May 13, seeking comments from the general public on this request submitted by the MDTA for a deletion in accordance with 23 CFR 658.11(d). The comment period closed on June 12. No comments were received.

The FHWA sought comments on this request for temporary deletion from the National Network in accordance with 23 CFR 658.11(d). Specifically, the request is for approval of the temporary closure of I–395 just south of Conway Street in the city of Baltimore from the period beginning Wednesday August 28, at approximately 7 p.m. through Tuesday, September 3, at around 6 a.m., encompassing the Labor Day holiday. This closure will be undertaken in support of the BGP which will use the streets of downtown Baltimore as a race course. The 2013 event is expected to attract 160,000 spectators over a 3–4 day period, not including the event organizer workforce and volunteers, the racing organizations and their respective personnel, or media and vendors. Event planners expect spectators from within a 400-mile radius of the city, with a large portion traveling the I–95 corridor. It is anticipated that the attendance for the peak day (Sunday) will reach 70,000 people with most arriving by private vehicle.

The construction and operation of the race course will create safety concerns by obstructing access from the I–395 northern terminus to the local street system including Howard Street, Conway Street, and Lee Street. However, an existing connection from I–395 to Martin Luther King, Jr. Boulevard will remain open throughout the event. In addition, access to and from I–95 into and out of the city along alternative access routes, including US 1, US 40, Russell Street, and Washington Boulevard will be maintained. The BGP and the city plan to update the 2012 signing plan to inform and guide motorists to, through, and around the impacted downtown area. The statewide transportation operations system, the Coordinated Highways Action Response Team, will provide real-time traffic information to motorists through dynamic message signs and highway advisory radio. The MDTA states that the temporary closure of this segment of I–395 to general traffic should have no impact on Interstate commerce. I–95, the main north-south Interstate route in the region, will remain open during the time period of the event. There are five additional I–95 interchanges, just to the north or south of I–395, with connections to the local street system including the arterials servicing the city's downtown area. A sign and supplemental traffic control systems plan was developed as part of the 2011 event's Traffic Management Plan (TMP). In addition, I–695 (Baltimore Beltway) will provide motorists traveling through the region the ability to bypass the impact area by circling around the city.

Commercial motor vehicles of the dimensions and configurations described in 23 CFR 658.13 and 658.15 which serve the impacted area, may use the alternate routes listed above.

Vehicles servicing the businesses bordering the impacted area will still be able to do so by also using the alternative routes noted above to circulate around the restricted area. In addition, vehicles not serving businesses in the restricted area but, currently using I–395 and the local street system to reach their ultimate destinations, will be able to use the I–95 interchanges north and south of I–395 to access the alternative routes. A map depicting the alternative routes is available electronically at the docket established for this notice at *http://www.regulations.gov*. The MDTA has reviewed these alternative routes and determined the routes to generally be capable of safely accommodating the diverted traffic during the period of temporary restriction. As mentioned previously, the sign and supplemental traffic control system plan is also being updated as part of the event's TMP. Commercial vehicles as well as general traffic leaving the downtown area will also be able to use the alternative routes to reach I–95 and the rest of the Interstate System. The BGP and the city are working closely with businesses, including the hotels and restaurants located within the impact area, to schedule deliveries prior to the proposed I–395 closure to the extent feasible. The BGP is also working with affected businesses to schedule delivery services during the event period.

The original plan uses a credentialing process for access through designated gates with access to specific loading areas. This request to temporarily close I–395 was prepared for the MDTA by the BGP and the city. In addition, the city has reached out to the Federal, State, and local agencies to collaborate and coordinate efforts to address the logistical challenges of hosting the BGP. The BGP and the city have worked extensively with the businesses and residential communities in the city that could be affected by the event. These efforts include the formation of Task Forces and event Sub-Committees, to guide the development of plans for event security, transportation management, public safety and more.

The FHWA did not receive any comments in response to the Notice and Request for Comment. After full consideration of the MDTA request discussed in this final notice and determining that the request meets the requirements of 23 CFR 658.11(d), FHWA approves the deletion as proposed.

Authority: 23 U.S.C. 127, 315 and 49 U.S.C. 31111, 31112, and 31114; 23 CFR part 658.

Dated: August 14, 2013.

Victor M. Mendez,

Administrator.

[FR Doc. 2013–20496 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0036]

2013 Temporary Closure of I–65 (I–70/I–65 South Split Interchange) in the City of Indianapolis

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final Notice.

SUMMARY: The FHWA has approved a request from the Indiana Department of Transportation (INDOT) to temporarily close a 2-mile portion of I–65 in Indiana (from I–70/I–65 south split interchange to I–70/I–65 north split interchange) for a period of 93 days, from Wednesday, August 21, to Thursday, November 21, 2013. The closure is requested to accommodate the reconstruction of the Virginia Avenue Bridge, which consists of replacing the northbound and southbound bridge girders and lowering the pavement section from south of Morris Street to north of Fletcher Avenue.

The approval is granted in accordance with the provisions of 23 CFR 658.11 which authorizes the deletion of segments of the federally designated routes that make up the National Network designated in Appendix A of 23 CFR Part 658. The FHWA published a Notice and Request for Comment on July 1, 2013, seeking comments from the general public on this request submitted by the INDOT for a deletion in accordance with 23 CFR 658.11(d). No comments were received.

DATES: *Effective Date:* This Notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Ms. Crystal Jones, Office of Freight Management and Operations, Office of Operations, (202) 366–2976, Mr. Bill Winne, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, and Mr. Richard Marquis, FHWA Division Administrator-Indiana Division, (317) 226–7483. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may retrieve a copy of the Notice and Request for Comment, comments submitted to the docket, and a copy of this final notice through the Federal eRulemaking portal at: *http://www.regulations.gov*. The Web site is available 24 hours each day, every day of the year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov*.

Background

The INDOT submitted a request to the FHWA for approval of the temporary closure of a segment of I–65, from the I–70/I–65 south split interchange to the I–70/I–65 north split interchange, for a period of 93 days, from the period beginning Wednesday, August 21, through Thursday, November 21. This closure will be undertaken in support of the reconstruction of the Virginia Avenue Bridge, which consists of replacing the northbound and southbound bridge girders and lowering the pavement section from south of Morris Street to north of Fletcher Avenue.

The FHWA is responsible for enforcing the Federal regulations applicable to the National Network of highways that can safely and efficiently accommodate the large vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982, as amended, designated in accordance with 23 CFR Part 658 and listed in Appendix A. In accordance with 23 CFR 658.11, the FHWA may approve deletions or restrictions of the Interstate system or other National Network route based upon specified justification criteria in section 658.11(d)(2). Requests for deletions are published in the **Federal Register** for notice and comment.

Notice and Request for Comment

The FHWA published a Notice and Request for Comment on July 1, seeking comments from the general public on this request submitted by the INDOT for a deletion in accordance with 23 CFR 658.11(d). The comment period closed on July 31. No comments were received.

The FHWA sought comments on this request for temporary deletion from the National Network in accordance with 23 CFR 658.11(d). Specifically, the request is for approval of the temporary closure

of I–65 (from I–70/I–65 south split interchange to I–70/I–65 north split interchange) from the period beginning Wednesday August 21, through Thursday, August 21. This closure will be undertaken to accommodate the reconstruction on the Virginia Avenue Bridge, which consists of replacing the northbound and southbound bridge girders and lowering the pavement section from south of Morris Street to north of Fletcher Avenue. Along its length, I–65 through Indianapolis, Indiana, passes under several bridges, many with limited vertical clearance. The bridges at Virginia Avenue, Fletcher Avenue, Calvary Street, and Morris Street have vertical clearances ranging from 13′ 11″, to 14′ 6″. This project will increase vertical clearances to a minimum 14′ 9″ at each of these locations. For the duration of the requested temporary closure, eastbound and westbound I–70 traffic will be detoured to I–465, around the south side of Indianapolis. Northbound and southbound I–65 traffic will be detoured to I–465. The INDOT states that the temporary closure of this segment of I–65 to general traffic should have negligible impact to interstate commerce. Commercial motor vehicles of the dimensions and configurations described in 23 CFR 658.13 and 658.15 serving the impacted area may use the alternate routes listed above. Vehicles servicing the businesses bordering the impacted area will still be able to do so by also using the alternative routes noted above to circulate around the restricted area. In addition, vehicles not serving businesses in the restricted area but, currently using I–65 and the local street system to reach their ultimate destinations, will be able to use I–465 to access the alternative routes. A map depicting the alternative routes is available electronically at the docket established for this notice at *http://www.regulations.gov*. The INDOT has reviewed these alternative routes and determined the routes to generally be capable of safely accommodating the diverted traffic during the period of temporary closure. The INDOT will increase the Hoosier Helper workforce (freeway service patrols) along I–465 to address incident response and minimize any incident impacts. The INDOT will issue a press release to inform the community of the closure and will post the closure in Road Restriction System. The INDOT traveler information Web site Traffic Wise will be utilized, as well as the 511 phone system. The INDOT will issue a formal press release upon notification that the request for closure has been approved. The INDOT has reached out to Federal, State, and local agencies to ensure a collaborative and coordinated effort to address the logistical challenges of reconstructing this section of I–65. The INDOT has notified the Indiana Motor Trucking Association of this plan to temporarily close I–65, and has agreed to work with them to provide information targeted at the trucking industry. This request to close I–65 to general traffic on or around August 21, 2013, was prepared for the INDOT in accordance with the Indianapolis Metropolitan Planning Organization's Transportation Plan. The INDOT's proposal has been approved by the city of Indianapolis Department of Public Works and INDOT will coordinate the closure with the Indianapolis Metropolitan Police Department.

The FHWA did not receive any comments in response to the Notice and Request for Comment. After full consideration of the INDOT request discussed in this final notice and determining that the request meets the requirements of 23 CFR 658.11(d), FHWA approves the deletion as proposed.

Authority: 23 U.S.C. 127, 315 and 49 U.S.C. 31111, 31112, and 31114; 23 CFR part 658.

Issued on: August 14, 2013.

Victor M. Mendez,

Administrator.

[FR Doc. 2013–20500 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2008–0362 and FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee (MCSAC) and Medical Review Board (MRB): Public Meetings

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Announcement of advisory committee public meetings.

SUMMARY: FMCSA announces a joint meeting of its Motor Carrier Safety Advisory Committee (MCSAC) and Medical Review Board (MRB) on September 9–10, 2013. MCSAC and the MRB will identify ideas and concepts the Agency should consider in reviewing the current hours of service requirements for drivers of passenger-carrying vehicles. This will enable MCSAC to complete its deliberations on Task 11–6 concerning hours-of-service (HOS) requirements for drivers of passenger-carrying vehicles. The committees will receive briefings on fatigue research on motorcoach drivers, and the North American Fatigue Management Program. On the afternoon of September 10, the committees will receive briefings on Schedule II medications. On Wednesday, September 11, MCSAC's Compliance, Safety and Accountability (CSA) subcommittee will convene. Also on Wednesday, September 11, the MRB will meet separately to discuss ideas and concepts the Agency should consider for gathering additional information about Schedule II medications and their effect on CMV drivers' ability to operate safely. Meetings are open to the public for their entirety and there will be a public comment period at the end of each day.

TIMES AND DATES: The joint meeting will be held Monday–Tuesday, September 9–10, 2013, from 9 a.m. to 4:30 p.m., Eastern Daylight Time (EDT), at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314 in the Washington and Jefferson Rooms on the 2nd floor. On Wednesday, September 11, 2013, the CSA subcommittee will meet at that same location and the MRB will meet across the street at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314 in the Mason Room on the Mezzanine level. Both meetings will take place from 9 a.m. to 4:30 p.m., EDT. Copies of all MRB and MCSAC Task Statements and an agenda for the entire meeting will be made available in advance of the meeting at *http://mrb.fmcsa.dot.gov* and *http://mcsac.fmcsa.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov*.

Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Elizabeth Turner at (617) 494–2068, *elizabeth.turner@dot.gov*, by Friday, August 30, 2013.

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, August

10, 2005) required the Secretary of Transportation to establish the MCSAC. MCSAC provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations, and operates in accordance with the Federal Advisory Committee Act (FACA, 5 U.S.C. App 2).

MRB

The MRB is comprised of five medical experts who each serve 2-year terms. Section 4116 of SAFETEA–LU requires the Secretary of Transportation, with the advice of the MRB and the chief medical examiner, to establish, review, and revise "medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely." The MRB operates in accordance with FACA, as announced in the **Federal Register** (70 FR 57642, October 3, 2005).

II. Meeting Participation

Oral comments from the public will be heard during the last half-hour of the meetings each day. Should all public comments be exhausted prior to the end of the specified period, the comment period will close. Members of the public may submit written comments on the topics to be considered during the meeting by Friday, August 30, 2013, to Federal Docket Management System (FDMC) Docket Number FMCSA–2008–0362 for the MRB and FMCSA–2006–26367 for the MCSAC using any of the following methods:

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

Issued on: August 16, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–20451 Filed 8–21–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Agency Information Collection Activity Under OMB Review; Reports, Forms and Recordkeeping Requirements

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 14, 2013, and comments were due by July 15, 2013. No comments were received.

DATES: Comments must be submitted on or before September 23, 2013.

FOR FURTHER INFORMATION CONTACT: Albert Bratton, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–5769 or email: *albert.bratton@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration.

Title: Determination of Fair and Reasonable Rates for Carriage of Agriculture Cargoes on U.S.-Flag Commercial Vessels.

OMB Control Number: 2133–0514.

Type Of Request: Extension of currently approved collection.

Affected Public: U.S. citizens who own and operate U.S.-flag vessels.

Forms: MA–1025, MA–1026, and MA–172.

Abstract: This collection of information requires U.S.-flag operators to submit annual vessel operating costs and capital costs data to Maritime Administration officials. The information is used by the Maritime Administration in determining fair and reasonable guideline rates for the carriage of preference cargoes on U.S.-flag vessels. In addition, U.S.-flag vessel operators are required to submit Post Voyage Reports to the Maritime Administration after completion of a cargo preference voyage.

Annual Estimated Burden Hours: 420 hours

Send comments regarding this collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: MARAD Desk Officer. Alternatively comments may be sent via email to the Office of Information and Regulatory Affairs, Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov*.

Comments Are Invited On: 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; the accuracy of the agency'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 best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: August 12, 2013.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2013–20527 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Agency Information Collection Activity Under OMB Review; Reports, Forms and Recordkeeping Requirements

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 14, 2013, and comments were due by July 15, 2013. No comments were received.

DATES: Comments must be submitted on or before September 23, 2013.

FOR FURTHER INFORMATION CONTACT: Dennis Brennan, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

Telephone: 202–366–1029 or email: *dennis.brennan@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Procedures for Determining Vessel Services Categories for Purposes of the Cargo Preference Act.

OMB Control Number: 2133–0540.

Type Of Request: Extension of currently approved collection.

Affected Public: Owners or operators of U.S.-registered vessels and foreign-registered vessels.

Forms: None.

Abstract: The purpose is to provide information to be used in the designation of service categories of individual vessels for purposes of compliance with the Cargo Preference Act under a Memorandum of Understanding entered into by the U.S. Department of Agriculture, U.S. Agency for International Development, and the Maritime Administration. The Maritime Administration will use the data submitted by vessel operators to create a list of Vessel Self-Designations and determine whether the Agency agrees or disagrees with a vessel owner's designation of a vessel.

Annual Estimated Burden Hours: 800 hours.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: MARAD Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov*.

Comments Are Invited On: 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; the accuracy of the agency'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 best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: August 12, 2013.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2013–20528 Filed 8–21–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 303 (Sub-No. 41X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Winnebago County, Wis.

On August 2, 2013, Wisconsin Central Ltd. (WCL) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon approximately 0.23 miles of rail line, known as the Galloway Spur, extending from milepost 206.27 at Henry Street to the end of the line at milepost 206.50 near South Commercial Street in Neenah, Winnebago County, Wis. The line traverses United States Postal Service Zip Code 54956. There are no stations on the line.[1]

WCL states that, based on information in its possession, the line does not contain federally granted rights-of-way. Any documentation in WCL'S possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 20, 2013.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 11, 2013. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 303 (Sub-No. 41X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Audrey L. Brodick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606. Replies to the petition are due on or before September 11, 2013.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who comment during its presentation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov*."

Decided: August 9, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2013–20501 Filed 8–21–13; 8:45 am]

BILLING CODE 4915–01–P

[1] WCL states that Galloway Company (Galloway) is the only shipper on the line. According to WCL, after abandonment, WCL plans to reclassify the line as private industry track and transfer it to Galloway, whose private track connects with the line. Galloway, WCL states, will acquire the track to expand and redevelop its rail facilities so that it can accommodate Galloway's future expansion and business growth. WCL further states that Galloway will remain a rail-served property after the abandonment.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8825

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 8825, Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

DATES: Written comments should be received on or before October 21, 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 Martha R. Brinson, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Marth.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

OMB Number: 1545–1186.

Form Number: Form 8825.

Abstract: Partnerships and S corporations file Form 8825 with either Form 1065 or Form 1120S to report income and deductible expenses from rental real estate activities, including net income or loss from rental real estate activities that flow through from partnerships, estate, or trusts. The IRS uses the information on the form to verify that partnerships and S corporations have correctly reported their income and expenses from rental real estate property.

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.

Estimated Number of Respondents: 705,000.

Estimated Time per Respondent: 8 hours., 55 minutes.

Estimated Total Annual Burden Hours: 6,288,600.

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.

Dated: August 16, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–20505 Filed 8–21–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13560

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 13560, Health Plan Administrator (HPA) Return of Funds Form.

DATES: Written comments should be received on or before October 21, 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 Martha R. Brinson, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 13560, Health Plan Administrator (HPA) Return of Funds Form.

OMB Number: 1545–1891.

Form Number: Form 13560.

Abstract: Form 13560 is completed by Health Plan Administrators (HPAs) and accompanies a return of funds in order to ensure proper handling. This form serves as supporting documentation for any funds returned by an HPA and clarifies where the payment should be applied and why it is being sent.

Type of Review: Extension of a currently approved collection.

Affected Public: Business *or* other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

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.

Dated: August 16, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–20510 Filed 8–21–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of the Interior

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2012–0005; 13XE1700DX EX1SF0000.DAQ000 EEEE500000]

RIN 1014–AA10

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Safety and Environmental Enforcement (BSEE) proposes to amend and update the regulations regarding oil and natural gas production by addressing issues such as: Safety and pollution prevention equipment lifecycle analysis, production safety systems, subsurface safety devices, and safety device testing. The proposed rule would differentiate the requirements for operating dry tree and subsea tree production systems on the Outer Continental Shelf (OCS) and divide the current subpart H into multiple sections to make the regulations easier to read and understand. The changes in this proposed rule are necessary to bolster human safety, environmental protection, and regulatory oversight of critical equipment involving production safety systems.

DATES: Submit comments by October 21, 2013. The BSEE may not fully consider comments received after this date. You may submit comments to the Office of Management and Budget (OMB) on the information collection burden in this proposed rule by September 23, 2013. The deadline for comments on the information collection burden does not affect the deadline for the public to comment to BSEE on the proposed regulations.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1014–AA10 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- Federal eRulemaking Portal: *http://www.regulations.gov*. In the entry titled Enter Keyword or ID, enter BSEE–2012–0005 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. The BSEE may post all submitted comments.
- Mail or hand-carry comments to the Department of the Interior (DOI); Bureau of Safety and Environmental Enforcement; Attention: Regulations Development Branch; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference "Oil and Gas Production Safety Systems, 1014–AA10" in your comments and include your name and return address.
- Send comments on the information collection in this rule to: Interior Desk Officer 1014–0003, Office of Management and Budget; 202–395–5806 (fax); email: *oira_submission@omb.eop.gov*. Please send a copy to BSEE.
- Public Availability of Comments—Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Kirk Malstrom, Regulations Development Branch, 703–787–1751, *kirk.malstrom@bsee.gov*.

SUPPLEMENTARY INFORMATION:

Executive Summary

This proposed rule would amend and update the Subpart H, Oil and Gas Production Safety Systems regulations. Subpart H has not had a major revision since it was first published in 1988. Since that time, much of the oil and gas production on the OCS has moved into deeper waters and the regulations have not kept pace with the technological advancements.

These regulations address issues such as production safety systems, subsurface safety devices, and safety device testing. These systems play a critical role in protecting workers and the environment. The BSEE would make the following changes to Subpart H in this rulemaking:

- Restructure the subpart to have shorter, easier-to-read sections based on the following headings:
  - General requirements;
  - Surface and subsurface safety systems—Dry trees;
  - Subsea and subsurface safety systems—Subsea trees;
  - Production safety systems;
  - Additional production system requirements;
  - Safety device testing; and
  - Records and training.
- Update and improve the safety and pollution prevention equipment (SPPE) lifecycle analysis in order to increase the overall level of certainty that this equipment would perform as intended including in emergency situations. The lifecycle analysis involves vigilance throughout the entire lifespan of the SPPE, including design, manufacture, operational use, maintenance, and eventual decommissioning of the equipment. A major component of the lifecycle analysis involves the proper documentation of the entire process. The documentation allows an avenue for continual improvement throughout the life of the equipment by evaluation of mechanical integrity and communication between equipment operators and manufacturers.
- Expand the regulations to differentiate the requirements for operating dry tree and subsea tree production systems on the OCS.
- Incorporate new industry standards and update the incorporation of partially incorporated standards to require compliance with the complete standards.
- Add new requirements for, but not limited to, the following:
  - SPPE life cycle and failure reporting;
  - Foam firefighting systems;
  - Electronic-based emergency shutdown systems (ESDs);
  - Valve closure timing;
  - Valve leakage rates;
  - Boarding shut down valves (BSDV); and
  - Equipment used for high temperature and high pressure wells.
- Rewrite the subpart in plain language according to:
  - The Plain Writing Act of 2010;
  - Executive Order 12866;
  - Executive Order 12988; and
  - Executive Order 13563, *Improving Regulation and Regulatory Review*.

In addition to Subpart H revisions, we would revise the regulation in Subpart A requiring best available and safest technology (BAST) to follow more closely the Outer Continental Shelf Lands Act's (OCSLA, or the Act) statutory provision for BAST, 43 U.S.C. 1347(b).

Review of Proposed Rule

This rulemaking proposes a complete revision of the regulations at 30 CFR Part 250, Subpart H—Oil and Gas Production Safety Systems. The current regulations were originally published on April 1, 1988 (53 FR 10690). Since that time, various sections were updated, and BSEE has issued several Notices to

Lessees (NTLs) to clarify the regulations and to provide guidance. The new version of subpart H would represent a major improvement in the structure and readability of the regulation with new changes in the requirements.

Organization

The proposed rule would restructure Subpart H. The new version is divided into shorter, easier-to-read sections. These sections are more logically organized, as each section focuses on a single topic instead of multiple topics found in each section of the current regulations. For example, in the current regulations, all requirements for subsurface safety devices are found in one section (§ 250.801). In the proposed rule, requirements for subsurface safety devices would be contained in 27 sections (§§ 250.810 through 250.839), with the sections organized by general requirements and requirements related to the use of either a dry or subsea tree. The groupings in the proposed rule would make it easier for an operator to find the information that applies to a particular situation. The numbering for proposed Subpart H would start at § 250.800, and end at § 250.891. The proposed rule would separate Subpart H into the following undesignated headings:

- General Requirements
- Surface and Subsurface Safety Systems—Dry Trees
- Subsea and Subsurface Safety Systems—Subsea Trees
- Production Safety Systems
- Additional Production System Requirements
- Safety Device Testing
- Records and Training

Major Changes to the Rule

Typically, well completions associated with offshore production platforms are characterized as either dry tree (surface) or subsea tree completions. The "tree" is the assembly of valves, gauges, and chokes mounted on a well casinghead used to control the production and flow of oil or gas. Dry tree completions are the standard for OCS shallow water platforms, with the tree in a "dry" state located on the deck of the production platform. The dry tree arrangement allows direct access to valves and gauges to monitor well conditions, such as pressure, temperature, and flow rate, as well as direct vertical well access. As oil and gas production moved into deeper water, dry tree completions, because they are easily accessible, were still used on new types of platforms more suitable for deeper waters; such as compliant towers, tension-leg platforms, and spars. Starting with Conoco's Hutton tension-leg platform installed in the North Sea in 1984 in approximately 486 feet of water, these platform types gradually extended the depth of usage for dry tree completions to over 4,600 feet of water depth.

Production in the Gulf of Mexico now occurs in depths of 9,000 feet of water, with many of the wells producing from water depths greater than 4,000 feet utilizing "wet" or subsea trees. With a subsea tree completion the tree is located on the seafloor. These subsea completions are generally tied back to floating production platforms, and from there the production moves to shore through pipelines. Due to the location on the seafloor, subsea trees or subsea completions do not allow for direct access to valves and gauges, but the pressure, temperature, and flow rate from the subsea location is monitored from the production platform and in some cases from onshore data centers. In conjunction with all production operations and completions, there are associated subsurface safety devices designed to prevent uncontrolled releases of reservoir fluid or gas.

Subpart H has not kept pace with industry's use of subsea trees and other technologies that have evolved or become more prevalent offshore over the last 20 years. This includes items as diverse as foam firefighting systems; electronic-based ESDs; subsea pumping, waterflooding, and gaslift; and new alloys and equipment for high temperature and high pressure wells.

Another major change to the regulations in this proposed rule involves the lifecycle analysis of SPPE. The lifecycle analysis of SPPE is not a new concept and its elements are discussed in several industry documents incorporated in this rule, such as American Petroleum Institute (API) Spec. 6a, API Spec. 14A, API Recommended Practice (RP) 14B, and corresponding International Organization for Standardization (ISO) 10432 and ISO 10417. This proposed rule would codify aspects of the lifecycle analysis into the regulations and bring attention to its importance. The lifecycle analysis involves careful consideration and vigilance throughout SPPE design, manufacture, operational use, maintenance, and decommissioning of the equipment. Lifecycle analysis is a tool for continual improvement throughout the life of the equipment.

To assist in locating the regulations, the following table shows how sections of the proposed rule correspond to provisions of the current regulations in Subpart H:

Current regulation	Proposed rule
§ 250.800 General requirements	§ 250.800 General.
§ 250.801 Subsurface safety devices	§ 250.810 Dry tree subsurface safety devices—general.
	§ 250.811 Specifications for subsurface safety valves (SSSVs)—dry trees.
	§ 250.812 Surface-controlled SSSVs—dry trees.
	§ 250.813 Subsurface-controlled SSSVs.
	§ 250.814 Design, installation, and operation of SSSVs—dry trees.
	§ 250.815 Subsurface safety devices in shut-in wells—dry trees.
	§ 250.816 Subsurface safety devices in injection wells—dry trees.
	§ 250.817 Temporary removal of subsurface safety devices for routine operations.
	§ 250.818 Additional safety equipment—dry trees.
	§ 250.821 Emergency action.
	§ 250.825 Subsea tree subsurface safety devices—general.
	§ 250.826 Specifications for SSSVs—subsea trees.
	§ 250.827 Surface-controlled SSSVs—subsea trees.
	§ 250.828 Design, installation, and operation of SSSVs—subsea trees.
	§ 250.829 Subsurface safety devices in shut-in wells—subsea trees.
	§ 250.830 Subsurface safety devices in injection wells—subsea trees.
	§ 250.832 Additional safety equipment—subsea trees.
	§ 250.837 Emergency action and safety system shutdown.

Current regulation	Proposed rule
§ 250.802 Design, installation, and operation of surface production-safety systems.	§ 250.819 Specification for surface safety valves (SSVs).
	§ 250.820 Use of SSVs.
	§ 250.833 Specification for underwater safety valves (USVs).
	§ 250.834 Use of USVs.
	§ 250.840 Design, installation, and maintenance—general.
	§ 250.841 Platforms.
	§ 250.842 Approval of safety systems design and installation features.
§ 250.803 Additional production system requirements	§ 250.850 Production system requirements—general.
	§ 250.851 Pressure vessels (including heat exchangers) and fired vessels.
	§ 250.852 Flowlines/Headers.
	§ 250.853 Safety sensors.
	§ 250.855 Emergency shutdown (ESD) system.
	§ 250.856 Engines.
	§ 250.857 Glycol dehydration units.
	§ 250.858 Gas compressors.
	§ 250.859 Firefighting systems.
	§ 250.862 Fire and gas-detection systems.
	§ 250.863 Electrical equipment.
	§ 250.864 Erosion.
	§ 250.869 General platform operations.
	§ 250.871 Welding and burning practices and procedures.
§ 250.804 Production safety-system testing and records	§ 250.880 Production safety system testing.
	§ 250.890 Records.
§ 250.805 Safety device training	§ 250.891 Safety device training.
§ 250.806 Safety and pollution prevention equipment quality assurance requirements.	§ 250.801 Safety and pollution prevention equipment (SPPE) certification.
	§ 250.802 Requirements for SPPE.
§ 250.807 Additional requirements for subsurface safety valves and related equipment installed in high pressure high temperature (HPHT) environments.	§ 250.804 Additional requirements for subsurface safety valves (SSSVs) and related equipment installed in high pressure high temperature (HPHT) environments.
§ 250.808 Hydrogen sulfide.	§ 250.805 Hydrogen sulfide.
New Sections	§ 250.803 What SPPE failure reporting procedures must I follow?
	§ 250.831 Alteration or disconnection of subsea pipeline or umbilical.
	§ 250.835 Specification for all boarding shut down valves (BSDV) associated with subsea systems.
	§ 250.836 Use of BSDVs
	§ 250.838 What are the maximum allowable valve closure times and hydraulic bleeding requirements for an electro-hydraulic control system?
	§ 250.839 What are the maximum allowable valve closure times and hydraulic bleeding requirements for a direct-hydraulic control system?
	§ 250.854 Floating production units equipped with turrets and turret mounted systems.
	§ 250.860 Chemical firefighting system.
	§ 250.861 Foam firefighting system.
	§ 250.865 Surface pumps.
	§ 250.866 Personal safety equipment.
	§ 250.867 Temporary quarters and temporary equipment.
	§ 250.868 Non-metallic piping.
	§ 250.870 Time delays on pressure safety low (PSL) sensors.
	§ 250.872 Atmospheric vessels.
	§ 250.873 Subsea gas lift requirements.
	§ 250.874 Subsea water injection systems.
	§ 250.875 Subsea pump systems.
	§ 250.876 Fired and Exhaust Heated Components.

Availability of Incorporated Documents for Public Viewing

When a copyrighted technical industry standard is incorporated by reference into our regulations, BSEE is obligated to observe and protect that copyright. The BSEE provides members of the public with Web site addresses where these standards may be accessed for viewing—sometimes for free and sometimes for a fee. The decision to charge a fee is decided by the standard developing organizations. The American Petroleum Institute (API) will provide free online public access to 160 key industry standards, including a broad range of technical standards. The standards available for public access represent almost one-third of all API standards and include all that are safety-related or have been incorporated into Federal regulations, including the standards in this rule. These standards are available for review, and hardcopies and printable versions will continue to be available for purchase. We are proposing to incorporate API standards in this proposed rule, and the address to the API Web site is: *http://publications.api.org/documentslist.aspx.* You may also call the API Standard/Document Contact IHS at 1–800–854–7179 or 303–397–7956 local and international.

For the convenience of the viewing public who may not wish to purchase or

view these proposed documents online, they may be inspected at the Bureau of Safety and Environmental Enforcement, 381 Elden Street, Room 3313, Herndon, Virginia 20170; phone: 703–787–1587; or at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

These documents, if incorporated in the final rule, would continue to be made available to the public for viewing when requested. Specific information on where these documents can be inspected or purchased can be found at 30 CFR 250.198, Documents Incorporated by Reference.

Section-by-Section Discussion

The following is a brief section-by-section description of the substantive proposed changes to subpart H, as well as other sections of the proposed rule. In several of the section descriptions below, BSEE requests comments on particular issues raised by that section.

What must I do to protect health, safety, property, and the environment? (§ 250.107)

The proposed rule would revise portions of § 250.107 related to the use of best available and safest technology (BAST) by revising paragraph (c) and removing paragraph (d). The intent of the change is to more closely track the BAST provision in the OCSLA. That statutory provision requires:

> on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technologies which the Secretary determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies (43 U.S.C. 1347(b).)

Existing § 250.107(c) requires the use of BAST "whenever practical" on "all exploration, development, and production operations." Moreover, it provides that compliance with the regulations generally is considered to be the use of BAST. The existing provision is problematic for a number of reasons. The use of the phrase "whenever practical" provides an operator substantial discretion in the use of BAST. The statute, on the other hand, requires the use of BAST that DOI determines to be economically feasible on all new drilling and production operations. With respect to existing operations, the Act requires operators to use BAST "wherever practicable," which does not afford the operator complete discretion in the use of systems equipment. In addition, although operators must comply with BSEE regulations, such compliance does not necessarily equate to the use of BAST. Existing paragraph (d) is written in terms of additional measures the Director can require under the Act, and includes a general requirement that the benefits of such measures outweigh the costs.

The proposed rule would more closely track the Act. Proposed § 250.107(c) would provide that wherever failure of equipment may have a significant effect on safety, health, or the environment, an operator must use the BAST that BSEE determines to be economically feasible on all new drilling and production operations, and wherever practicable, on existing operations. Under this proposed provision, BSEE would specify what is economically feasible BAST. This could be accomplished generally, for instance, through the use of NTLs, or on a case-specific basis. To implement the exception allowed by the Act, proposed § 250.107(c)(2) would allow an operator to request an exception from the use of BAST by demonstrating to BSEE that the incremental benefits of using BAST are clearly insufficient to justify the incremental costs of utilizing such technologies.

Service Fees (§ 250.125)

This section would be revised to update the service fee citation to § 250.842 in paragraphs (a)(10) through (a)(15).

Documents Incorporated by Reference (§ 250.198)

This section would be revised to update cross-references to subpart H. The proposed rule would also add by incorporation, "American Petroleum Institute (API) 570, Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems."

Tubing and Wellhead Equipment (§ 250.517)

This section would be revised to update the cross-reference to the appropriate subpart H sections from § 250.801 in current regulations to §§ 250.810 through 250.839 in the proposed rule.

Tubing and Wellhead Equipment (§ 250.618)

This section would be revised to update the cross-reference to the appropriate subpart H sections from § 250.801 in current regulations to §§ 250.810 through 250.839 in the proposed rule.

Subpart H—General Requirements

General (§ 250.800)

This section would clarify the design requirements for production safety equipment and specify the appropriate industry standards that must be followed. A provision would be added that would require operators to comply with American Petroleum Institute Recommended Practice (API RP) 14J, Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities, for all new production systems on fixed leg platforms and floating production systems (FPSs). This section would clarify requirements for operators to comply with the drilling, well completion, well workover, and well production riser standards of API RP 2RD, Recommended Practice for Design of Risers for Floating Production Systems (FPSs) and Tension-Leg Platforms (TLPs). However, this new section would prohibit the installation of single bore production risers from floating production facilities, effective 1 year from publication of the final rule. The BSEE believes that a single bore production riser does not provide an acceptable level of safety to operate on the OCS when an operator has to perform work through the riser. When an operator performs work through a single bore production riser, wear on the riser may occur that compromises the integrity of the riser. This section would also revise stationkeeping system design requirements for floating production facilities by adding a reference to API RP 2SM, Recommended Practice for Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring; in proposed § 250.800(c)(3).

Safety and Pollution Prevention Equipment (SPPE) Certification (§ 250.801)

Existing § 250.806, pertaining to SPPE certification, would be recodified as proposed § 250.801 and rewritten in plain language. Additional subsections would be added to clarify that SPPE includes SSV and actuators, including those installed on injection wells that are capable of natural flow, and, following a 1-year grace period, boarding shut down valves (BSDVs). The final rule would specify the end date of the grace period. This section would also specify that BSEE would not

allow subsurface-controlled subsurface safety valves on subsea wells.

The existing regulations recognize two quality assurance programs: (1) API Spec. Q1 and (2) American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) SPPE–1–1994 and SPPE–1d–1996 Addenda. The proposed rule would remove the reference to the ANSI/ASME standards because they are defunct, but would continue to provide that SPPE equipment, which is manufactured and marked pursuant to API Spec. Q1, Specification for Quality Programs for the Petroleum, Petrochemical and Natural Gas Industry (ISO TS 29001:2007), would be considered certified SPPE under part 250. The BSEE presumptively considers all other SPPE as noncertified. Notwithstanding this presumption, under proposed § 250.801(c), BSEE may exercise its discretion to accept SPPE manufactured under quality assurance programs other than API Spec. Q1 (ISO TS 29001:2007), provided an operator submits a request to BSEE containing relevant information about the alternative program, and receives BSEE approval under § 250.141.

Requirements for SPPE (§ 250.802)

Existing § 250.806(a)(3), cross-referencing API requirements for SPPE, would be recodified as proposed §§ 250.802(a) and (b).

Proposed § 250.802(c) would include a summary of some of the requirements that are contained in documents that are currently incorporated by reference to provide examples of the types of requirements that are contained in these documents. These requirements would address a range of activities over the entire lifecycle of the equipment that are intended to increase the reliability of the equipment through lifecycle analysis. These include:

- Independent third party review and certification;
- Manufacturing controls;
- Design verification and testing;
- Traceability requirements;
- Installation and testing protocols; and
- Requirements for the use of qualified parts and personnel to perform repairs.

The lifecycle analysis for SPPE would consider the "cradle-to-grave" implications of the associated equipment. Lifecycle analysis would also be a tool to evaluate the operational use, maintenance, and repair of SPPE from an equipment lifecycle perspective. Requirements that address the full lifecycle of critical equipment are essential to increase the overall level of certainty that this equipment would perform in emergency situations and would provide documentation from manufacture through the end of the operational limits of the SPPE equipment.

Proposed § 250.802(c)(1) would require that each device be designed to function and to close at the most extreme conditions to which it may be exposed. This includes extreme temperature, pressure, flow rates, and environmental conditions. Under the proposed rule, an operator would be required to have an independent third party review and certify that each device will function as designed under the conditions to which it may be exposed. The independent third party would be required to have sufficient expertise and experience to perform the review and certification.

A table would be added in proposed § 250.802(d) to clarify when operators must install certified SPPE equipment. Under the proposed rule, non-certified SPPE already in service at a well could remain in service, but if the equipment requires offsite repair, re-manufacturing, or any hot work such as welding, it must be replaced with certified SPPE.

Proposed § 250.802(e) would require that operators must retain all documentation related to the manufacture, installation, testing, repair, redress, and performance of SPPE equipment until 1 year after the date of decommissioning of the equipment.

What SPPE failure reporting procedures must I follow? (§ 250.803)

Proposed § 250.803 would establish SPPE failure reporting procedures. Proposed § 250.803(a) would require operators to follow the failure reporting requirements contained in Section 10.20.7.4 of API Spec. 6A for SSVs, BSDVs, and USVs and Section 7.10 of API Spec. 14A and Annex F of API RP 14B for SSSVs, and to provide a written report of equipment failure to the manufacturer of such equipment within 30 days after the discovery and identification of the failure. The proposed rule would define a failure as any condition that prevents the equipment from meeting the functional specification. This is intended to assure that design defects are identified and corrected and to assure that equipment is replaced before it fails.

Proposed § 250.803(b) would require operators to ensure that an investigation and a failure analysis are performed within 60 days of the failure to determine the cause of the failure and that the results and any corrective action are documented. If the investigation and analysis is performed by an entity other than the manufacturer, the proposed rule would require operators to ensure that the manufacturer receives a copy of the analysis report.

Proposed § 250.803(c) would specify that if an equipment manufacturer notifies an operator that it has changed the design of the equipment that failed, or if the operator has changed operating or repair procedures as a result of a failure, then the operator must, within 30 days of such changes, report the design change or modified procedures in writing to BSEE.

Additional Requirements for Subsurface Safety Valves (SSSVs) and Related Equipment Installed in High Pressure High Temperature (HPHT) Environments (§ 250.804)

Existing § 250.807 would be recodified as proposed § 250.804, with no significant revisions proposed.

Hydrogen Sulfide (§ 250.805)

Existing § 250.808, pertaining to production operations in zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown, as defined in § 250.490, would be recodified as proposed § 250.805. This section would also clarify that the operator must receive approval through the Deepwater Operations Plan (DWOP) process for production operations in HPHT environments containing H_2S, or in HPHT environments where the presence of H_2S is unknown.

[RESERVED] §§ 250.806—250.809

Surface and Subsurface Safety Systems—Dry Trees

Dry Tree Subsurface Safety Devices—General (§ 250.810)

Existing § 250.801(a) would be recodified as proposed § 250.810, and restructured for clarity. This section would also add the equipment flow coupling above and below to the list of devices associated with subsurface safety devices.

Specifications for Subsurface Safety Valves (SSSVs)—Dry Trees (§ 250.811)

Existing § 250.801(b) would be recodified as proposed § 250.811. This section would also add the equipment flow coupling above and below to the list of devices associated with subsurface safety devices. Section 250.811 would permit BSEE to approve non-certified SSSVs in accordance with the process specified in 250.141 regarding alternative procedures or equipment.

Surface-Controlled SSSVs—Dry Trees (§ 250.812)

Existing § 250.801(c) would be recodified as proposed § 250.812. A change from current regulations would require BSEE approval for locating the surface controls at a remote location. The request and approval to locate surface controls at a remote location would be made in accordance with 250.141, regarding alternative procedures or equipment.

Subsurface-Controlled SSSVs (§ 250.813)

Existing § 250.801(d) would be recodified as proposed § 250.813, and rewritten using plain language.

Design, Installation, and Operation of SSSVs—Dry Trees (§ 250.814)

Existing § 250.801(e) would be recodified as proposed § 250.814. Proposed § 250.814(c) would also add a definition of routine operation similarly to what is found under the definitions section at § 250.601.

Subsurface Safety Devices in Shut-in Wells—Dry Trees (§ 250.815)

Existing § 250.801(f) would be recodified as proposed § 250.815, and rewritten in plain language.

Subsurface Safety Devices in Injection Wells—Dry Trees (§ 250.816)

Existing § 250.801(g) would be recodified as proposed § 250.816, and rewritten in plain language.

Temporary Removal of Subsurface Safety Devices for Routine Operations (§ 250.817)

Existing § 250.801(h) would be recodified as proposed § 250.817. The title of the section would be changed for clarity. In proposed § 250.817(c), the term "support vessel" would be added as another option for attendance on a satellite structure.

Additional Safety Equipment—Dry Trees (§ 250.818)

Existing § 250.801(i) would be recodified as proposed § 250.818, with no significant revisions proposed.

Specification for Surface Safety Valves (SSVs) (§ 250.819)

The portion of existing § 250.802(c) related to wellhead SSVs and their actuators would be included in proposed § 250.819. The portion of the existing § 250.802(c) related to underwater safety valves would be placed in proposed § 250.833.

Use of SSVs (§ 250.820)

The portion of existing § 250.802(d) related to SSVs would be included in proposed § 250.820. The portion of the existing § 250.802(d) related to underwater safety valves would be placed in proposed § 250.834.

Emergency Action (§ 250.821)

Existing § 250.801(j) would be recodified as proposed § 250.821. The example of an emergency would be revised to refer to a National Weather Service-named tropical storm or hurricane because not all impending storms constitute emergencies. A requirement would be added that oil and gas wells requiring compression must be shut-in in the event of an emergency unless otherwise approved by the District Manager. This section would also include, from existing § 250.803(b)(4)(ii), the valve closure times for dry tree emergency shutdowns.

[RESERVED] §§ 250.822—250.824

Subsea and Subsurface Safety Systems—Subsea Trees

Subsea Tree Subsurface Safety Devices—General (§ 250.825)

Proposed § 250.825(a) is derived from existing § 250.801(a). This section would provide clarification on subsurface safety devices on subsea trees. Requirements for dry trees subsea safety systems can be found at §§ 250.810 through 250.821. This section would also add the equipment flow coupling above and below to the list of devices associated with subsurface safety devices. Proposed § 250.825(a) would also permit operators to seek BSEE approval to use alternative procedures or equipment in accordance with 250.141 if the subsea safety systems proposed for use vary from the regulatory requirements, including those pertaining to dry subsea safety systems found at §§ 250.810 through 250.821.

Proposed § 250.825(b) would provide that, after installing the subsea tree, but before the rig or installation vessel leaves the area, an operator must test all valves and sensors to ensure that they are operating as designed and meet all the conditions specified in subpart H. Proposed § 250.825(b) would permit an operator to seek BSEE approval of a departure under 250.142 in the event the operator cannot perform these tests.

Specifications for SSSVs—Subsea Trees (§ 250.826)

Proposed § 250.826 would be developed from existing § 250.801(b). The portions of § 250.801(b) pertaining to subsurface-controlled SSSVs for dry tree wells would be moved to proposed § 250.811. Subsurface-controlled SSSVs are not allowed on wells with subsea trees.

Surface-Controlled SSSVs—Subsea Trees (§ 250.827)

This section would be derived from existing § 250.801(c). A change from the existing provision would require BSEE approval for locating the surface controls at a remote location.

Design, Installation, and Operation of SSSVs—Subsea Trees (§ 250.828)

Existing § 250.801(e) would be recodified as proposed § 250.828, with changes made to reflect that this section covers subsea tree installations. One change from existing regulations would establish that a well with a subsea tree must not be open to flow while an SSSV is inoperable. The BSEE would not allow exceptions.

Subsurface Safety Devices in Shut-in Wells—Subsea Trees (§ 250.829)

Existing § 250.801(f) would be recodified as proposed § 250.829. The BSEE would also clarify when a surface-controlled SSSV is considered inoperative. This explanation would be added because the hydraulic control pressure to an individual subsea well may not be able to be isolated due to the complexity of the subsea hydraulic distribution of subsea fields.

Subsurface Safety Devices in Injection Wells—Subsea Trees (§ 250.830)

This section would be derived from existing § 250.801(g). The substance of proposed § 250.830 for subsea tree wells would be substantially similar to the regulatory sections pertaining to proposed § 250.816 for dry tree wells. This is one example in which BSEE has consolidated similar provisions for easier public understanding.

Alteration or Disconnection of Subsea Pipeline or Umbilical (§ 250.831)

This is a new section that would be added to codify policy and guidance from an existing BSEE Gulf of Mexico Region NTL, "Using Alternate Compliance in Safety Systems for Subsea Production Operations," NTL No. 2009–G36. The proposed provision would provide that if a necessary alteration or disconnection of the pipeline or umbilical of any subsea well would affect an operator's ability to monitor casing pressure or to test any subsea valves or equipment, the operator must contact the appropriate BSEE District Office at least 48 hours in advance and submit a repair or

replacement plan to conduct the required monitoring and testing.

Additional Safety Equipment—Subsea Trees (§ 250.832)

This section would be derived from existing § 250.801(i), with changes made to reflect that this section covers subsea tree installations. The last sentence of existing § 250.801(i), generally requiring closure of surface-controlled SSSVs in certain circumstances, would not be needed for wells with subsea trees, because more specific surface-controlled SSSV closure requirements would be established in proposed §§ 250.838 and 250.839, described later.

Specification for Underwater Safety Valves (USVs) (§ 250.833)

Proposed § 250.833 derives in part from existing § 250.802(c) with references to surface safety valves removed to separate out requirements for the use of dry or subsea trees. The portions of the existing rule concerning surface safety valves for dry trees would be contained in proposed § 250.819. Proposed § 250.833 would also clarify the designations of the primary USV (USV1), the secondary USV (USV2), and that an alternate isolation valve (AIV) may qualify as a USV. Proposed § 250.833(a) would require that operators must install at least one USV on a subsea tree and designate it as the primary USV, and that BSEE must be kept informed if the primary USV designation changes.

Much of the material included in proposed §§ 250.833 through 250.839 derives from existing NTL No. 2009–G36, and is currently implemented through the DWOP process described under §§ 250.286 through 250.295. Inclusion of this material in subpart H would better inform the regulated community of BSEE's expectations, and seeking public comment through this rulemaking will allow for possible improvements.

Use of USVs (§ 250.834)

Proposed § 250.834, pertaining to the inspection, installation, maintenance, and testing of USVs, derives from existing § 250.802(d) with references to surface safety valves removed to separate out requirements for the use of dry or subsea trees. This section would add references to USVs designated as primary, secondary, and any alternate isolation valve (AIV) that acts as a USV and also would add a reference to DWOPs.

Specification for All Boarding Shut Down Valves (BSDVs) Associated With Subsea Systems (§ 250.835)

Proposed § 250.835 would be a new section which would establish minimum design and other requirements for BSDVs and their actuators. This section would impose the requirements for the use of a BSDV, which assumes the role of the SSV required by 30 CFR Part 250, Subpart H for a traditional dry tree. This would ensure the maximum level of safety for the production facility and the people aboard the facility. Because the BSDV is the most critical component of the subsea system, it is necessary that this valve be subject to rigorous design and testing criteria.

Use of BSDVs (§ 250.836)

Proposed § 250.836 would establish a new requirement that all BSDVs must be inspected, maintained, and tested according to the provisions of API RP 14H. This section also specifies what the operator would do if a BSDV does not operate properly or if fluid flow is observed during the leakage test.

Emergency Action and Safety System Shutdown (§ 250.837)

Proposed § 250.837 would replace existing § 250.801(j) for subsea tree installations. New requirements would be added to clarify allowances for valve closing sequences for subsea installations and specify actions required for certain situations. Proposed § 250.837(c) and (d) would describe a number of emergency situations requiring that shutdowns occur and safety valves be closed, and in certain situations that hydraulic systems be bled.

What are the Maximum Allowable Valve Closure Times and Hydraulic Bleeding Requirements for an Electro-hydraulic Control System? (§ 250.838)

Proposed § 250.838 would establish maximum allowable valve closure times and hydraulic system bleeding requirements for electro-hydraulic control systems. Proposed paragraph (b) would apply to electro-hydraulic control systems when an operator has not lost communication with its rig or platform. Proposed paragraph (c) would apply to electro-hydraulic control systems when an operator has lost communication with its rig or platform. Each paragraph would include a table containing valve closure times for BSDVs, USVs, and surface-controlled SSSVs under the various scenarios described in proposed § 250.837(c). The tables derive from Appendices to NTL No. 2009–G36.

What are the maximum allowable valve closure times and hydraulic bleeding requirements for direct-hydraulic control system? (§ 250.839)

Proposed § 250.839 would establish maximum allowable valve closure times and hydraulic system bleeding requirements for direct-hydraulic control systems. It would contain a valve closure table comparable to those contained in proposed § 250.838.

Production Safety Systems

Design, Installation, and Maintenance—General (§ 250.840)

Existing § 250.802(a) would be recodified as proposed § 250.840. Several new production components (pumps, heat exchangers, etc.) would be added to this section.

Platforms (§ 250.841)

Existing § 250.802(b) would be recodified as proposed § 250.841. New requirements for facility process piping would be added in proposed § 250.841(b). The new paragraph would require adherence to existing industry documents, API RP 14E, Design and Installation of Offshore Production Platform Piping Systems and API 570, Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems. Both of these documents would be incorporated by reference in § 250.198. The proposed rule would also specify that the BSEE District Manager could approve temporary repairs to facility piping on a case-by-case basis for a period not to exceed 30 days.

Approval of Safety Systems Design and Installation Features (§ 250.842)

Existing § 250.802(e) would be recodified as proposed § 250.842, including the service fee associated with the submittal of the production safety system application. The proposed rule would require adherence to API Recommended Practice documents pertaining to the design of electrical installations. The proposed rule would also require completion of a hazard analysis during the design process and require that a hazards analysis program be in place to assess potential hazards during the operation of the platform. A table would be placed in the proposed rule for clarity, amplifying some of the current requirements. This section would also add the requirements that the designs for the mechanical and electrical systems were reviewed, approved, and stamped by a registered professional engineer. Also, it would add a requirement that the as-built piping and instrumentation diagrams

(P&IDs) must be certified correct and stamped by a registered professional engineer. This section would also specify that the registered professional engineer, in both instances, must be registered in a State or Territory of the United States and have sufficient expertise and experience to perform the duties. The importance of these new provisions were highlighted in the Atlantis investigation report "BP'S Atlantis Oil And Gas Production Platform: An Investigation of Allegations that Operations Personnel Did Not Have Access to Engineer-Approved Drawings," published March 4, 2011, prepared by BSEE's predecessor agency, the Bureau of Ocean Energy Management, Regulation and Enforcement. A copy of this report is available online at the following address: *http://www.bsee.gov/uploadedFiles/03-0311%20BOEMRE%20Atlantis%20Report%20-%20FINAL.pdf*. To clarify some of the issues discussed in the Atlantis investigation report related to as-built P&IDs and to clarify other diagram requirements, proposed § 250.842 would require the following:

- Engineering documents to be stamped by a registered professional engineer;
- Operators to certify that all listed diagrams, including P&IDs are correct and accessible to BSEE upon request; and
- All as-built diagrams outlined in § 250.842(a)(1) and (2) to be submitted to the District Managers.

The proposed § 250.842(b)(3) would impose a requirement that the operator certify in its application that it has performed a hazard analysis during the design process in accordance with API RP 14J, Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities, and that it has a hazards analysis program in place to assess potential hazards during the operation of the platform. Although the regulations pertaining to an operator's safety and environmental management systems (SEMS) program already require a hazards analysis under § 250.1911, the hazards analysis for the production platform required under the proposed rule would contain more detail under the incorporated API Recommended Practice than is currently required under the SEMS regulation.

The operator must comply with both hazards analysis requirements from each respective subpart; however, these requirements for subpart H may also be used to satisfy a portion of the hazards analysis requirements in subpart S.

[RESERVED] §§ 250.843–250.849

Additional Production System Requirements

Production System Requirements—General (§ 250.850)

The proposed rule would split existing § 250.803 into a number of sections (proposed §§ 250.850 through 250.872) to make the regulations shorter, and thus more readable. Existing § 250.803(a) would be codified as proposed § 250.850.

Pressure Vessels (Including Heat Exchangers) and Fired Vessels (§ 250.851)

Existing § 250.803(b)(1), establishing requirements for pressure and fired vessels, would be codified as proposed § 250.851. Tables would be placed in the proposed rule for clarity.

Flowlines/Headers (§ 250.852)

Existing § 250.803(b)(2), which establishes requirements for flowlines and headers, would be codified as proposed § 250.852. The existing regulations require the establishment of new operating pressure ranges at any time a "significant" change in operating pressures occurs. The proposed rule would specify instead that new operating pressure ranges of flowlines would be required at any time when the normalized system pressure changes by 50 psig (pounds per square inch gauge) or 5 percent, whichever is higher. New requirements also would be added for wells that flow directly to a pipeline without prior separation and for the closing of SSVs by safety sensors. A table would be placed in the proposed rule for clarity.

Safety Sensors (§ 250.853)

Existing § 250.803(b)(3), pertaining to safety sensors, would be codified as proposed § 250.853 with the addition that all level sensors would have to be equipped to permit testing through an external bridle on new vessel installations.

Floating Production Units Equipped With Turrets and Turret Mounted Systems (§ 250.854)

Proposed § 250.854 would contain a new requirement for floating production units equipped with turrets and turret mounted systems. The operator would have to integrate the auto slew system with the safety system allowing for automatic shut-in of the production process including the sources (subsea wells, subsea pumps, etc.) and releasing of the buoy. The safety system would be required to immediately initiate a process system shut-in according to §§ 250.838 and 250.839 and release the buoy to prevent hydrocarbon discharge and damage to the subsea infrastructure when the buoy is clamped, the auto slew mode is activated, and there is a ship heading/position failure or an exceedance of the rotational tolerances of the clamped buoy.

This new section would also require floating production units equipped with swivel stack arrangements, to be equipped with a leak detection system for the portion of the swivel stack containing hydrocarbons. The leak detection system would be required to be tied into the production process surface safety system allowing for automatic shut-in of the system. Upon seal system failure and detection of a hydrocarbon leak, the surface safety system would be required to immediately initiate a process system shut-in according to §§ 250.838 and 250.839. These new requirements are needed because they are not addressed in the currently incorporated API RP 14C and would help protect against hydrocarbon discharge in the event of failures.

Emergency Shutdown (ESD) System (§ 250.855)

Existing § 250.803(b)(4), pertaining to emergency shutdown systems, would be recodified as proposed § 250.855. The existing regulation provides that only ESD stations at a boat landing may utilize a loop of breakable synthetic tubing in lieu of a valve. The proposed rule would clarify that the breakable loop in the ESD system is not required to be physically located on the boat landing; however, in all instances it must be accessible from a boat.

Engines (§ 250.856)

Existing § 250.803(b)(5), pertaining to engine exhaust and diesel engine air intake, would be recodified as proposed § 250.856. A listing of diesel engines that do not require a shutdown device would be added to the proposed rule for clarification.

Glycol Dehydration Units (§ 250.857)

Existing § 250.803(b)(6), pertaining to glycol dehydration units, would be recodified as proposed § 250.857. New requirements for flow safety valves and shut down valves on the glycol dehydration unit would be added to the proposed rule.

Gas Compressors (§ 250.858)

Existing § 250.803(b)(7), pertaining to gas compressors, would be recodified as proposed § 250.858. New proposed requirements would be added to require the use of pressure recording devices to

establish any new operating pressure range changes greater than 5 percent or 50 psig, whichever is higher. For pressure sensors on vapor recovery units, proposed § 250.858(c) would provide that when the suction side of the compressor is operating below 5 psig and the system is capable of being vented to atmosphere, an operator is not required to install PSH and PSL sensors on the suction side of the compressor.

Firefighting Systems (§ 250.859)

Existing § 250.803(b)(8), pertaining to firefighting systems, would be recodified in proposed §§ 250.859, 250.860, and 250.861 and expanded. A number of the proposed additional features were included in an earlier NTL No. 2006–G04, "Fire Prevention and Control Systems," and are necessary to update the agency regulations pertaining to firefighting.

Proposed § 250.859(a)(2) would include additional requirements. Existing § 250.803(b)(8)(i) and (ii) would be included in proposed § 250.859(a)(1) and (2). This paragraph would specify that within 1 year after the publication date of a final rule, operators must equip all new firewater pump drivers with automatic starting capabilities upon activation of the ESD, fusible loop, or other fire detection system. For electric driven firewater pump drivers, in the event of a loss of primary power, operators would be required to install an automatic transfer switch to cross over to an emergency power source in order to maintain at least 30 minutes of run time. The emergency power source would have to be reliable and have adequate capacity to carry the locked-rotor currents of the fire pump motor and accessory equipment. Operators would be required to route power cables or conduits with wires installed between the fire water pump drivers and the automatic transfer switch away from hazardous-classified locations that can cause flame impingement. Power cables or conduits with wires that connect to the fire water pump drivers would have to be capable of maintaining circuit integrity for not less than 30 minutes of flame impingement.

Proposed § 250.859(a)(5) would require that all firefighting equipment located on a facility be in good working order. Existing § 250.803(b)(8)(iv) and (v) would be included in proposed § 250.859(a)(3) and (4).

Proposed § 250.859(b) would address inoperable firewater systems. It would specify that if an operator is required to maintain a firewater system and it becomes inoperable, the operator either must shut-in its production operations while making the necessary repairs, or request that the appropriate BSEE District Manager grant a departure under § 250.142 to use a firefighting system using chemicals on a temporary basis for a period up to 7 days while the necessary repairs occur. It would provide further that if the operator is unable to complete repairs during the approved time period because of circumstances beyond its control, the BSEE District Manager may grant extensions to the approved departure for periods up to 7 days.

Chemical Firefighting System (§ 250.860)

Existing § 250.803(b)(8)(iii) allows the use of a chemical firefighting system in lieu of a water-based system if the District Manager determines that the use of a chemical system provides equivalent fire-protection control. A number of the additional details were included from NTL 2006–G04, and are necessary to update the agency's regulations pertaining to firefighting. This proposed section would specify requirements regarding the use of chemical-only systems on major platforms, minor manned platforms, or minor unmanned platforms. The proposed rule would define the terms of major and manned platforms. It would also require a determination by the BSEE District Manager that the use of a chemical-only system would not increase the risk to human safety.

To provide a basis for the District Manager's determination that the use of a chemical system provides equivalent fire-protection control, the proposed rule would require an operator to submit a justification addressing the elements of fire prevention, fire protection, fire control, and firefighting on the platform. As a further basis, the operator would need to submit a risk assessment demonstrating that a chemical-only system would not increase the risk to human safety. The rule would contain a table listing the items that must be included in the risk assessment.

We are currently considering applying the proposed requirements, for approval of chemical-only firefighting systems, to major and manned minor platforms that already have agency approval, as well as to new platforms. We solicit comments as to whether including already-approved platforms would be feasible and would provide an additional level of safety and protection so as to justify the cost and effort.

Proposed § 250.860(b) would address what an operator must maintain or submit for the chemical firefighting system. This section would also clarify that once the District Manager approves the use of a chemical-only fire suppressant system, if the operator intends to make any significant change to the platform such as placing a storage vessel with a capacity of 100 barrels or more on the facility, adding production equipment, or planning to man an unmanned platform, it must seek BSEE District Manager approval.

Proposed § 250.860(c) would address the use of chemical-only firefighting systems on platforms that are both minor and unmanned. The rule would authorize the use of a U.S. Coast Guard type and size rating "B–II" portable dry chemical unit (with a minimum UL Rating (US) of 60–B:C) or a 30-pound portable dry chemical unit, in lieu of a water system, on all platforms that are both minor and unmanned, as long as the operator ensures that the unit is available on the platform when personnel are on board. A facility-specific authorization would not be required.

Foam Firefighting System (§ 250.861)

Proposed § 250.861 would establish requirements for the use of foam firefighting systems. Under the proposed rule, when foam firefighting systems are installed as part of a firefighting system, the operator would be required annually to (1) conduct an inspection of the foam concentrates and their tanks or storage containers for evidence of excessive sludging or deterioration; and (2) send tested samples of the foam concentrate to the manufacturer or authorized representative for quality condition testing and certification. The rule would specify that the certification document must be readily accessible for field inspection. In lieu of sampling and certification, the proposed rule would allow operators to replace the total inventory of foam with suitable new stock. The rule would also require that the quantity of concentrate must meet design requirements, and tanks or containers must be kept full with space allowed for expansion.

Fire and Gas-Detection Systems (§ 250.862)

Existing § 250.803(b)(9), pertaining to fire and gas-detection systems, would be recodified as proposed § 250.862.

Electrical Equipment (§ 250.863)

Existing § 250.803(b)(10) pertaining to electrical equipment, would be recodified as proposed § 250.863.

Erosion (§ 250.864)

Existing § 250.803(b)(11) pertaining to erosion control, would be recodified as proposed § 250.864.

Surface Pumps (§ 250.865)

Proposed § 250.865, pertaining to surface pumps, would contain material from existing § 250.803(b)(1)(iii), pressure and fired vessels, as well as new requirements for pump installations. This would include a requirement to use pressure recording devices to establish new operating pressure ranges for pump discharge sensors, and a specific requirement to equip all pump installations with the protective equipment recommended by API RP 14C, Appendix A—A.7, Pumps.

Personnel Safety Equipment (§ 250.866)

Proposed § 250.866 is a new section that would require that all personnel safety equipment be maintained in good working order.

Temporary Quarters and Temporary Equipment (§ 250.867)

Proposed § 250.867 is a new section that would require that all temporary quarters installed on OCS facilities be approved by BSEE and that temporary quarters be equipped with all safety devices required by API RP 14C, Appendix C. It would also clarify that the District Manager could require the installation of a temporary firewater system. This new section would also require that temporary equipment used for well testing and/or well clean-up would have to be approved by the District Manager.

The temporary equipment requirements are needed based on a number of incidents involving the unsuccessful use of such equipment. Currently, BSEE receives limited information regarding temporary equipment. These changes would help ensure that BSEE has a more complete understanding of all operations associated with temporary quarters and temporary equipment.

Non-metallic Piping (§ 250.868)

Proposed § 250.868 is a new section that would require that non-metallic piping be used only in atmospheric, primarily non-hydrocarbon service such as piping in galleys and living quarters, open atmospheric drain systems, overboard water piping for atmospheric produced water systems, and firewater system piping.

General Platform Operations (§ 250.869)

Existing § 250.803(c), pertaining to general platform operations, would be codified as proposed § 250.869, with a new requirement in the proposed rule (§ 250.869(e)) that would prohibit utilization of the same sensing points for both process control devices and component safety devices on new installations. This section would also establish monitoring procedures for bypassed safety devices and support systems.

A new provision in paragraph (2)(i) would require the computer-based technology system control stations to not only show the status of, but be capable of displaying, operating conditions. It also clarifies that if the electronic systems are not capable of displaying operating conditions, then industry would have to have field personnel monitor the level and pressure gauges and be in communication with the field personnel.

A new provision, proposed § 250.869(a)(3), would be added that would specify that operators must not bypass, for maintenance or startup, any element of the emergency support system (ESS) or other support system required by API RP 14C, Appendix C, without first receiving approval from BSEE to use alternative procedures or equipment in accordance with 250.141. These are essential systems that provide a level of protection to a facility by initiating shut-in functions or reacting to minimize the consequences of released hydrocarbons. The rule would contain a non-exclusive list of these systems.

Time Delays on Pressure Safety Low (PSL) Sensors (§ 250.870)

Proposed § 250.870, another new provision, would be added to incorporate guidance of existing NTL 2009–G36, related to time delays on PSL sensors. The proposed rule would specify that operators must apply industry standard Class B, Class C, and Class B/C logic to all applicable PSL sensors installed on process equipment, as long as the time delay does not exceed 45 seconds. Use of a PSL sensor with a time delay greater than 45 seconds would require BSEE approval of a request under § 250.141. Operators would be required to document on their field test records any use of a PSL sensor with a time delay greater than 45 seconds.

For purposes of proposed § 250.870, PSL sensors would be categorized as follows:

Class B safety devices have logic that allows for the PSL sensors to be bypassed for a fixed time period (typically less than 15 seconds, but not more than 45 seconds). These sensors are mostly used in conjunction with the design of pump and compressor panels and include PSL sensors, lubricator no-flows, and high-water jacket temperature shutdowns.

Class C safety devices have logic that allows for the PSL sensors to be bypassed until the component comes into full service (*i.e.*, at the time at which the startup pressure equals or exceeds the set pressure of the PSL sensor, the system reaches a stabilized pressure, and the PSL sensor clears).

Class B/C safety devices have logic that allows for the PSL sensors to incorporate a combination of Class B and Class C circuitry. These devices are used to ensure that the PSL sensors are not unnecessarily bypassed during startup and idle operations, such as, Class B/C bypass circuitry activates when a pump is shut down during normal operations. The PSL sensor remains bypassed until the pump's start circuitry is activated and either the Class B timer expires no later than 45 seconds from start activation or the Class C bypass is initiated until the pump builds up pressure above the PSL sensor set point and the PSL sensor comes into full service.

The proposed rule would also provide that if an operator does not install time delay circuitry that bypasses activation of PSL sensor shutdown logic for a specified time period on process and product transport equipment during startup and idle operations, the operator must manually bypass (pin out or disengage) the PSL sensor, with a time delay not to exceed 45 seconds. Use of a manual bypass that involves a time delay greater than 45 seconds would require approval of a request made under § 250.141 from the appropriate BSEE District Manager.

Welding and Burning Practices and Procedures (§ 250.871)

Existing § 250.803(d), pertaining to welding and burning practices and procedures, would be recodified as proposed § 250.871, with a proposed new requirement that would prohibit variance from the approved welding and burning practices and procedures unless such variance were approved by BSEE as an acceptable alternative procedure or equipment in accordance with § 250.141.

Atmospheric Vessels (§ 250.872)

Proposed § 250.872 is a new section that would require atmospheric vessels used to process and/or store liquid hydrocarbons or other Class I liquids as described in API RP 500 or 505 to be equipped with protective equipment identified in API RP 14C. Requirements for level safety high sensors (LSHs) would also be added. There would also be clarification added that for atmospheric vessels that have oil buckets, the LSH sensor would have to

be installed to sense the level in the oil bucket.

Subsea Gas Lift Requirements (§ 250.873)

This is a new section that would be added to codify existing policy and guidance from the DWOP process. The BSEE has approved the use of gas lift equipment and methodology in subsea wells, pipelines, and risers via the DWOP approval process and imposed conditions to ensure that the necessary safety mitigations are in place. While the basic requirements of API RP 14C still apply for surface applications, certain clarifications need to be made to ensure regulatory compliance when gas lift for recovery for subsea production operations is used. Proposed § 250.873 would add the following new requirements: design of the gas lift supply pipeline according to API 14C; installation of specific safety valves, including a gas-lift shutdown valve and a gas-lift isolation valve; outlining the valve closure times and hydraulic bleed requirements according to the DWOP; and gas lift valve testing requirements.

Subsea Water Injection Systems (§ 250.874)

This is a new section that would be added to codify existing policy and guidance from the DWOP process, related to water flood injection via subsea wellheads. This is similar to the subsea gas lift as discussed in the previous section. The basic requirements of API RP 14C still apply for surface applications, yet certain clarifications need to be made to ensure regulatory compliance for the use of water flood systems for recovery for subsea production operations. Proposed § 250.874 would add the following new requirements: adhere to the water injection requirements described in API RP 14C for the water injection equipment located on the platform; equip the water injection system with certain safety valves, including water injection valve (WIV) and a water injection shutdown valve (WISDV); establish the valve closure times and hydraulic bleed requirements according to the DWOP; and establish WIV testing requirements.

Subsea Pump Systems (§ 250.875)

This is a new section that would be added to codify policy and guidance from an existing National NTL, "Subsea Pumping for Production Operations," NTL No. 2011–N11 and the DWOP. Proposed § 250.875 would outline subsea pump system requirements, including: the installation and location of specific safety valves, operational considerations under circumstances if the maximum possible discharge pressure of the subsea pump operating in a dead head situation could be greater than the maximum allowable operating pressure (MAOP) of the pipeline, the reference to desired valve closure times contained within the DWOP, and subsea pump testing.

Fired and Exhaust Heated Components (§ 250.876)

This is a new section that would require certain tube-type heaters to be removed, inspected, repaired, or replaced every 5 years by a qualified third party. This new section would also add that the inspection results must be documented, retained for at least 5 years, and made available to BSEE upon request. This new section was added in part due to the BSEE investigation report into the Vermillion 380 platform fire "Vermilion Block, Production Platform A: An Investigation of the September 2, 2010 Incident in the Gulf of Mexico, May 23, 2011." The report states that "The immediate cause of the fire was that the Heater-Treater's weakened fire tube became malleable and collapsed in a 'canoeing' configuration, ripping its steel apart and creating openings through which hydrocarbons escaped, came into contact with the Heater-Treater's hot burner, and then produced flames." The report states that a possible contributing cause of the fire was a lack of routine inspections of the fire tube. From the report, "we found that a possible contributing cause of the fire was the company's failure to follow the [BSEE] regulations related to API 510 that require an inspection plan for Heater-Treaters and its failure to regularly inspect and maintain the Heater-Treater. [BSEE] regulations require the operator to routinely maintain and inspect the pressure vessel. While the regulations do not specifically address the fire tube inside of the Heater-Treater, weaknesses in the fire tube and temperature-related issued would likely have been identified if the operator routinely inspected the Heater-Treater."

The Vermillion 380 platform fire is one of the recently documented incidents involving fires or hazards caused by fire tube failures. Since 2011, there have been other similar incidents involving tube-type heaters. These types of incidents involving tube-type heaters are a concern for BSEE due to the potential safety issues of offshore personnel and infrastructure. The BSEE determined that this new requirement would help ensure tube-type heaters are inspected routinely to minimize the risk of tube-type heater incidents.

[RESERVED] §§ 250.877–250.879

Safety Device Testing

Production Safety System Testing (§ 250.880)

Existing § 250.804(a), pertaining to production safety system testing, would be recodified as proposed § 250.880. A table would be inserted to help to clarify requirements and make them easier to find.

Proposed § 250.880(a) would include the notification requirement from existing § 250.804(a)(12) and would clarify that an operator must give BSEE 72 hours notice prior to commencing production so that BSEE may witness a preproduction test and conduct a preproduction inspection of the integrated safety system.

In proposed § 250.880, BSEE would revise existing requirements to increase certain liquid leakage rates from 200 cubic centimeters per minute to 400 cubic centimeters per minute and gas leakage rates from 5 cubic feet per minute to 15 cubic feet per minute. These proposed changes reflect consistency with industry standards and account for accessibility of equipment in deepwater/subsea applications. In 1999, the former Minerals Management Service funded the Technology Assessment and Research Project #272, "Allowable Leakage Rates and Reliability of Safety and Pollution Prevention Equipment", to review increased leakage rates for safety and pollution prevention equipment. The recommendations section of this study states, "there appears to be preliminary evidence indicating that more stringent leakage requirements specified in 30 CFR Part 250 may not significantly increase the level of safety when compared to the leakage rates recommended by API. However, a complete hazards analysis should be conducted, and industry safety experts should be consulted." You may view the complete report at *http://bsee.gov/Research-and-Training/Technology-Assessment-and-Research/Project-272.aspx*. In the past, BSEE has allowed a higher leakage rate than that prescribed in existing § 250.804 as an approved alternate compliance measure in the DWOP because of BSEE's and industry's acceptance of the "barrier concept". The barrier concept moves the SSV from the well to the BSDV that has been proven to be as safe as, or safer than, what is required by the current regulations.

The following table compares existing allowable leakage rates to the proposed increased allowable leakage rates for various safety devices:

Item name	Allowable leakage rate testing requirements under current regulations	The increased allowable leakage rate testing requirements for the proposed rule
Surface-controlled SSSVs (including devices installed in shut-in and injection wells).	liquid leakage rate < 200 cubic centimeters per minute, or.	liquid leakage rate < 400 cubic centimeters per minute, or
	gas leakage rate < 5 cubic feet per minute	gas leakage rate < 15 cubic feet per minute.
Tubing plug	liquid leakage rate < 200 cubic centimeters per minute, or.	liquid leakage rate < 400 cubic centimeters per minute, or
	gas leakage rate < 5 cubic feet per minute	gas leakage rate < 15 cubic feet per minute.
Injection valves	liquid leakage rate < 200 cubic centimeters per minute, or.	liquid leakage rate < 400 cubic centimeters per minute, or
	gas leakage rate < 5 cubic feet per minute	gas leakage rate < 15 cubic feet per minute.
USVs	0 leakage rate	liquid leakage rate < 400 cubic centimeters per minute, or gas leakage rate < 15 cubic feet per minute.
Flow safety valves (FSV)	liquid leakage rate < 200 cubic centimeters per minute, or.	liquid leakage rate < 400 cubic centimeters per minute, or
	gas leakage rate < 5 cubic feet per minute	gas leakage rate < 15 cubic feet per minute.

Additionally, proposed § 250.880 would contain new requirements for BSDVs, changes to the testing frequency for underwater safety valves, and requirements for the testing of ESD systems, as well as pneumatic/electronic switch LSH and level safety low (LSL) controls. This section would also add testing and repair/replacement requirements for subsurface safety devices and associated systems on subsea trees and for subsea wells shut-in and disconnected from monitoring capability for greater than 6 months. Many of these requirements would be included in a series of proposed tables.

[RESERVED] (§§ 250.881–250.889)

Records and Training

Records (§ 250.890)

Existing § 250.804(b), pertaining to maintaining records of installed safety devices, would be recodified as proposed § 250.890, with new information submittal requirements that are meant to assist BSEE in contacting operators.

Safety Device Training (§ 250.891)

Existing § 250.805, pertaining to personnel training, would be recodified as proposed § 250.891. The wording of this section would be changed to more accurately capture the scope of subpart S training requirements.

[RESERVED] (§§ 250.892–250.899)

Additional Comments Solicited

In additional to the input requested above, BSEE requests public comment on the following:

Organization of Rule Based on Use of Subsea Trees and Dry Trees

The BSEE requests general public comments on whether the proposed reorganization of the regulations by type of facility (subsea tree and dry tree) is helpful.

Lifecycle Analysis Approach to Other Types of Critical Equipment Such as Blowout Preventers (BOPs)

The BSEE is considering applying a lifecycle analysis approach to other types of critical equipment that we regulate. We are specifically requesting comments on how this approach could be used to assist in increasing the reliability of critical equipment such as BOPs. The BSEE currently relies on pressure testing to demonstrate BOP performance and reliability. Can a lifecycle approach replace or supplement these requirements? Are there other types of critical equipment that are good candidates for the life cycle approach? Are there industry standards that can serve as the basis for BSEE's increased focus on the life cycle of critical equipment?

Failure Reporting and Information Dissemination

Industry standards such as API Spec. 14A include processes and procedures for addressing the reporting and subsequent review of the failure of critical equipment. This information is extremely important in ensuring continuous improvement in the design and reliability of the equipment. Based on recent experiences in the GOM and input from industry, BSEE believes there are a variety of factors that discourage the timely and voluntary exchange of this type of information with the rest of the industry and BSEE. The BSEE believes that a more comprehensive and formalized reporting and review system would increase the exchange of data and allow the industry and BSEE to identify trends and issues that impact offshore safety. The BSEE requests comments on whether these failure reports should be submitted directly to BSEE or provided to an appropriate third party organization that would be responsible for reviewing and analyzing the data and notifying the industry of potential problems. The BSEE also requests comments on how this type of system could be broaden to include international offshore operations.

Third Party Certification Organizations

In various sections of the regulations, BSEE requires third party verification of the design of systems and equipment. The design, installation, inspection, maintenance, and repair of subsea equipment and systems presents a variety of unique technical challenges to the industry and BSEE. The BSEE solicits comments on the use of third party certification organizations to assist BSEE in ensuring that these systems are designed and maintained during its entire service life with an acceptable degree of risk. The BSEE also solicits comments on the use of a single lifecycle certification program that covers SPPE, risers, platforms, and production systems.

Information Requested on Opportunities To Limit Emissions of Natural Gas From OCS Production Equipment

Throughout the production process, certain volumes of natural gas are lost to the atmosphere through fugitive emissions and flaring or venting. The BSEE is evaluating opportunities to reduce methane and other air emissions through use of the best available production equipment technology and practices. We are seeking additional information on these opportunities. Information obtained through public comments on this topic may be used to support a Regulatory Impact Analysis.

We are not proposing new production equipment requirements to limit emissions in this rulemaking, but are seeking additional information on technologies and costs for emissions-limiting equipment that can be used on OCS production facilities. This information will be considered consistent with applicable statutes and E.O. 12866/13563 during BSEE's evaluation of future regulatory options.

The GAO issued a report on this topic in October 2010: *http://www.gao.gov/new.items/d1134.pdf, Opportunities Exist To Capture Vented and Flared Natural Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases.* As part of Interior's response to that report, BSEE is further evaluating opportunities to limit natural gas emissions on existing production facilities.

Venting, flaring, and small fugitive releases of natural gas are often a necessary part of production; however, the lost gas has safety, economic, and environmental implications. It represents a loss of revenue for lessees, loss of royalty revenue for the Federal government, and adds to greenhouse gases in the atmosphere. Implementation of available emissions-limiting equipment and venting and flaring reduction technologies could increase sales volumes, revenue, and improve the environment.

Routine preventive maintenance and certain technologies are applied to capture or flare much of this lost gas. The technologies' feasibility varies and heavily depends on the characteristics of the OCS production facility. The following emissions-limiting equipment may provide for prevention, capture, or flaring of released natural gas:

(1) Gas dehydration: A flash tank separator and vapor recovery unit that reduces the amount of gas that is vented into the atmosphere.

(2) Pneumatic devices: Replacing pneumatic devices at all stages of production that release, or "bleed," gas at a high rate (high-bleed pneumatics) with devices that bleed gas at a lower rate (low-bleed pneumatics), or installing an air pneumatic system and converting to instrument air instead.

(3) Losses from flashing (reciprocating compressors): Replace cup ring, cups, and cases. How often is this preventive maintenance performed on reciprocating compressors?

(4) Losses from flashing (centrifugal compressors): Replace wet seals with dry seals or install a gas recovery system.

We are seeking additional information on the cost, economic viability and estimated effectiveness of equipment and these actions or others on OCS production facilities. If your OCS production facilities already employ the best available emissions limiting technology and equipment, or if there are other equipment or practices that limit emissions on OCS production facilities, we welcome that information also. Does your company have a leak detection (infrared/acoustic detection equipment) or maintenance program for OCS production facilities? What has your company found regarding the cost-effectiveness and benefits of such a program? Comments from the public are also welcome.

Flaring

We are seeking additional information similar to that provided by the Offshore Operators Committee (OOC) at the then Bureau of Ocean Energy Management Regulation and Enforcement, March 2011, workshop on venting and flaring. The profiles of operator's production facilities vary widely and BSEE welcomes additional facility information from operators beyond that provided at the workshop.

The workshop (75 FR 81950) regulations.gov docket BOEM–2010–0042 resulted in some information for the installation of flare equipment on GOM shelf facilities. The cost information in the following table was provided by OOC for a single operator's GOM production facilities. Furthermore we would like to get similar information from other operators. We are specifically seeking your company count of the facility types listed in the table below, and if the associated estimated cost for each facility type is appropriate.

Facility type	Estimated cost for flare installation
Gas already flared	$0
Satellite facilities with no significant venting	0
Facilities with adequate vent boom to support flare	1,629,000
Facilities with inadequate vent boom, but structure can support flare boom installation	2,639,000
Facilities with inadequate vent boom, structure cannot support flare boom installation.	6,664,000

Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA determined that that this rule is not a significant rulemaking under E.O. 12866. Nevertheless, BSEE had an outside contractor prepare an economic analysis to assess the anticipated costs and potential benefits of the proposed rulemaking. The following discussions summarize the economic analysis; however, a complete copy of the economic analysis can be viewed at *www.Regulations.gov* (use the keyword/ID "BSEE–2012–0005").

This proposed rule largely codifies standard industry practice and clarifies existing BSEE regulations and guidance. The requirements under the proposed rule align with those under the 1988 rule and other existing documents that regulate and guide the industry (e.g., Deepwater Operations Plans (DWOPs), Notices to Lessees (NTLs), and American Petroleum Institute (API) industry standards). The economic effect of the proposed rule is confined to certain reporting, certification, inspection, and documentation requirements, which have an estimated incremental cost for offshore oil and natural gas production facilities in aggregate of approximately $170,000 per year (see Table 1 below) without taking into consideration the potential benefits associated with the potential reduction in oil spills and injuries. The following Table provides a summary of the economic analysis.

TABLE 1—ECONOMIC ANALYSIS SUMMARY

$ costs of proposed rule =	−($1.71 million).
Potential $ benefits of proposed rule due to increased leakage rates =	$1.54 million.
(Potential $ benefits of increased leakage rates − $ costs) =	−($172,027).

TABLE 1—ECONOMIC ANALYSIS SUMMARY—Continued

Potential benefits in $ due to potential incident avoidance of oil spills and injuries =	$19.4 million.
Break-even risk reduction level =	8.07 percent.

The proposed rule is intended to address, among other things, issues that have developed since publication in 1988 (53 FR 10690) of the existing Subpart H rule. Since that time, oil and gas production on the OCS has moved into deeper waters, introducing new challenges for industry and BSEE. For example, industry has shown interest in employing new technologies, including foam firefighting systems; subsea pumping, water flooding, and gas lift; and new alloys and equipment for high temperature and high pressure wells. Many of the new provisions in the proposed rule would codify BSEE's policies pertaining to production safety systems. This proposed rule would codify essential elements included in existing guidance documents, make clear BSEE's basic expectations, and provide industry with a balance of predictability and flexibility to address concerns related to offshore oil and natural gas production.

The BSEE is requesting comment on other options to consider, including alternatives to the specific provisions contained in the proposed rule, with the goal of ensuring a full discussion of these issues in advance of the final rule stage.

The BSEE retained a contractor to estimate the annual economic effect of this proposed rule on the offshore oil and natural gas production industry by comparing the costs and potential benefits of the new provisions in the proposed rule to the baseline (i.e., current practice in accordance with the 1988 rule, existing guidance documents, and industry standards). Existing impacts from the 1988 rule, DWOPs, NTLs, and API standards were not considered as costs and benefits of this proposed rule because they are part of the baseline. The analysis covered 10 years (2012 through 2021) to capture all major costs and potential benefits that could result from this proposed rule and presents the estimated annual effects, as well as the 10-year discounted totals using discount rates of 3 and 7 percent.

The BSEE welcomes comments on this analysis, including potential sources of data or information on the costs and potential benefits of this proposed rule. In summary, the contractor monetized the costs of the proposed rule for all the following provisions determined to result in a change from baseline: Reporting after a failure of SPPE equipment; notifying BSEE of production safety issues; certification for designs of mechanical and electrical systems; certification letter for mechanical and electrical systems installed in accordance with approved designs; certification of as-built diagrams of schematic piping and instrumentation diagrams and the safety analysis flow diagram; As-built piping and instrumentation diagrams to be maintained at a secure onshore location; inspection, testing, and certification of foam firefighting systems; inspection of fired and exhaust heated components; and submission of a contact list for OCS platforms. The analysis also considered the time required for industry staff to read and familiarize themselves with the new regulation. The total expected cost over 10 years of complying with these provisions is $16.87 million, or on average $1.7 million annually.

In addition, the analysis valued the expected potential benefits of the proposed rule by evaluating the increase of the allowable leakage rates for certain safety valves and by evaluating oil spills and injuries as a whole. This proposed rule intends to address the unnecessary repair or replacement of certain safety valves due to a higher allowable leakage rate and reduce the number of incidents resulting in oil spills and injuries. Thus, the total benefits of the rule consist of potential benefits for increasing the allowable leakage rates of certain safety devices and avoided damages. The potential benefit of allowing a higher leakage rate for certain safety valves is approximately $1.54 million annually. Using avoided cost factors developed for rulemaking in the wake of the Deepwater Horizon oil spill, the contractor estimated OCS facilities addressed by this rule account for an annual average of $19.4 million dollars in damages due to potential spills and injuries, for a total maximum potential benefit amount of $20.9 million. While the proposed rule is aimed at preventing oil spills and injuries, the actual reduction in the probability of incidents that the proposed rule would achieve is uncertain. Due to this uncertainty, BSEE was not able to perform a standard cost-benefit analysis estimating the net benefits of the proposed rule. As is common in situations where regulatory benefits are highly uncertain, a break-even analysis, which estimates the minimum risk reduction the proposed rule would need to achieve for the rule to be cost-beneficial. However, the potential benefits of the proposed rule only need to reduce these baseline adverse effects by between 8 and 9 percent to be considered cost-effective. This break-even analysis result suggests that the proposed rule would be beneficial even if it resulted in only one or two fewer typical incidents annually than the average of about 200 per year that happen under the baseline conditions.

Thus, BSEE has concluded that the proposed rule would produce substantial benefits that justify the compliance costs that it would impose.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The BSEE works closely with engineers and technical staff to ensure this rulemaking utilizes sound engineering principles and options through research, standards development, and interaction with industry. Thus, we have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The DOI certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603 requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation would have a significant economic impact on a substantial number of small entities. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial

number of small entities. Further, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact. For the reasons explained in this section, BSEE believes this rule is not likely to have a significant economic impact and, therefore, an initial regulatory flexibility analysis is not required by the RFA. However, in the interest of transparency, BSEE had a contractor prepare an initial Regulatory Flexibility Analysis (IRFA) to assess the impact of this proposed rule on small entities, as defined by the applicable Small Business Administration (SBA) size standards. The following discussions summarize the IRFA; however, a copy of the complete IRFA can be viewed at *www.Regulations.gov* (use the keyword/ID "BSEE–2012–0005").

a. Reasons BSEE Is Considering Action

The BSEE identified a need to revise Subpart H, Oil and Gas Production Safety Systems, which addresses production safety systems, subsurface safety devices, and safety device testing used in oil and natural gas production on the OCS, among other issues. These systems play a critical role in protecting workers and the environment. However, BSEE has not revised the regulation since its publication in 1988 (53 FR 10690). Since that time, oil and gas production on the OCS has moved into deeper waters, introducing new challenges for industry and BSEE. Many of the new provisions in the proposed rule would codify BSEE guidance and incorporate current industry practice. In addition, the wording and structure of the 1988 rule creates confusion about the requirements. The BSEE has rewritten and reorganized the rule to clarify existing requirements and highlight important information. These revisions would significantly improve readability of the regulation.

b. Description and Estimated Number of Small Entities Regulated

A small entity is one that is "independently owned and operated and which is not dominant in its field of operation." The definition of small business varies from industry to industry in order to properly reflect industry size differences.

The proposed rule would affect operators and holders of Federal oil and gas leases, as well as pipeline right-of-way holders, on the OCS. The BSEE's analysis shows that this includes about 130 companies with active operations. Entities that operate under this rule fall under the SBA's North American Industry Classification System (NAICS) codes 211111 (Crude Petroleum and Natural Gas Extraction) and 213111 (Drilling Oil and Gas Wells). For these NAICS classifications, a small company is defined as one with fewer than 500 employees. Based on this criterion, approximately 90 (69 percent) of the companies operating on the OCS are considered small and the rest are considered large businesses. Therefore, BSEE estimates that the proposed rule would affect a substantial number of small entities.

c. Description and Estimate of Compliance Requirements

The BSEE has estimated the incremental costs for small operators, lease holders, and right-of-way holders in the offshore oil and natural gas production industry. Costs that already existed as a result of the 1988 rule, DWOPs, and currently-incorporated API standards were not considered as costs of this rule because they are part of the baseline. We have estimated the costs of the following provisions of the proposed rule: Reporting after a failure of SPPE equipment; notifying BSEE about production technical issues; certification, submission, and maintenance of designs and diagrams; inspection, testing, and certification of foam firefighting systems; inspection of fired and exhaust heated components; submission of contact list for OCS platforms; and familiarization with the new regulation.

Table 2 below shows the annual costs per small entity. Because most small entities would not be subject to all of the rule provisions, we also calculated the most likely impact on small entities, or the impact associated with only incurring the cost for the provisions for foam firefighting systems, inspection of fired and exhaust heated components, submission of contact list, and familiarization with the new regulations. This calculation resulted in a most likely average annual cost per affected small entity of $5,906 as shown in Table 2. In addition, we calculated a "complete compliance scenario" impact for an entity that would incur the costs of all of the rule provisions. As shown in Table 2, this complete compliance scenario impact is $8,183 per affected entity.

We then calculated the impact on small entities for these three scenarios as a percentage of the average revenues for small entities in the affected industries.

TABLE 2—ANNUAL COST PER SMALL ENTITY

[10-Year average] [1]

	10-Year average
(1) Reporting after a failure of SPPE equipment	$168
(2) Notifying BSEE about technical issues	378
(3) Certification, submission, and maintenance of designs and diagrams	1,730
(4) Inspection, testing, and certification of foam firefighting systems	757
(5) Five-year inspection of fired and exhaust heated components	5,000
(6) Submission of contact list for OCS platforms	127
(7) Familiarization with new regulation	22
Most likely average annual cost per small entity (4 + 5 + 6 + 7)	5,906
Complete compliance scenario average annual cost per small entity	8,183

[1] Totals may not add because of rounding.

As shown in Table 3, the average costs of the two scenarios represent far less than 1 percent of average annual revenues for small entities in the affected industries.

TABLE 3—COST AS A PERCENTAGE OF REVENUE

Average revenue of a small business	45,700,000	
	Cost	Cost/revenue (percent)
Most likely total (4 + 5 + 6 + 7)	$5,906	0.013
Complete compliance scenario cost total	8,183	0.018

Based on this analysis, BSEE believes that this proposed rule would have a limited net direct cost impact on small operators, lease holders, and pipeline right-of-way holders beyond the baseline costs currently imposed by regulations with which industry already complies. The BSEE concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

d. Description of Significant Alternatives to the Proposed Rule

The operating risk for small companies to incur safety or environmental accidents is not necessarily lower than it is for larger companies. Offshore operations are highly technical and can be hazardous. Adverse consequences in the event of incidents are the same regardless of the operator's size. The proposed rule would reduce risk for entities of all sizes. Nonetheless, BSEE is requesting comment on the costs of these proposed policies on small entities, with the goal of ensuring thorough consideration and discussion at the final rule stage. We specifically request comments on the burden estimates discussed above as well as information on regulatory alternatives that would reduce the burden on small entities (e.g., different compliance requirements for small entities, alternative testing requirements and periods, and exemption from regulatory requirements).

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BSEE, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. This proposed rule would revise the requirements for oil and gas production safety systems. The changes would not have an impact on the economy or any economic sector, productivity, jobs, the environment, or other units of government. Most of the new requirements are related to inspection, testing, and paperwork requirements, and would not add significant time to development and production processes. The complete annual compliance cost for each affected small entity is estimated at $8,183.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements will apply to all entities operating on the OCS.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (Executive Order 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implications Assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

The BSEE has the authority to regulate offshore oil and gas production. State governments do not have authority over offshore production in Federal waters. None of the changes in this proposed rule would affect areas that are under the jurisdiction of the States. It would not change the way that the States and the Federal government interact, or the way that States interact with private companies.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors, ambiguity, and be written to minimize litigation; and

(b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA) of 1995

This proposed rule contains a collection of information that will be submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As part of our continuing effort to reduce paperwork and respondent burdens, BSEE invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. If you wish to comment on the information collection (IC) aspects of this proposed rule, you may send your comments directly to OMB and send a copy of your comments to the Regulations and Standards Branch (see the **ADDRESSES** section of this proposed rule). Please reference: 30 CFR Part 250, Subpart H, *Oil and Gas Production Safety Systems*, 1014–0003, in your comments. You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau's Information Collection Clearance Officer at (703) 787–1607. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations 30 to 60 days after publication of this document in the **Federal Register**.

Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by September 23, 2013. This does not affect the deadline for the public to comment to BSEE on the proposed regulations.

The title of the collection of information for this rule is 30 CFR Part 250, Subpart H, *Oil and Gas Production Safety Systems* (Proposed Rulemaking). The proposed regulations concern oil and gas production requirements, and the information is used in our efforts to protect life and the environment, conserve natural resources, and prevent waste.

Potential respondents comprise Federal OCS oil, gas, and sulphur operators and lessees. The frequency of response varies depending upon the requirement. Responses to this collection of information are mandatory, or are required to obtain or retain a benefit; they are also submitted on occasion, annually, and as a result of situations encountered depending upon the requirement. The IC does not include questions of a sensitive nature. The BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), 30 CFR part 252, *OCS Oil and Gas Information Program*, and 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection.*

As discussed earlier in the preamble, the proposed rule is a complete revision of the current subpart H. It incorporates guidance from several NTLs that respondents currently follow, and would codify various conditions that BSEE imposes when approving production safety systems to ensure that they are installed and operated in a safe and environmentally sound manner. OMB approved the IC burden of the current 30 CFR part 250, subpart H regulations under control number 1014–0003 (62,963 burden hours; and $343,794 non-hour cost burdens). When the final revised subpart H regulations take effect, the IC burden approved for this rulemaking will replace the collection under 1014–0003 in its entirety.

There is also a revised paragraph (c)(2) proposed for 30 CFR 250.107 that would impose a new IC requirement. The paperwork burden for this proposed regulation is included in the submission to OMB for approval of the proposed IC for subpart H. When this rulemaking becomes final, the 30 CFR Part 250, Subpart A, paperwork burden would be removed from this collection of information and consolidated with the IC burden under OMB Control Number 1014–0022, 30 CFR Part 250, Subpart A, General.

The following table provides a breakdown of the paperwork and non-hour cost burdens for this proposed rulemaking. For the current requirements retained in the proposed rule, we used the approved estimated hour burdens and the average number of annual responses where discernible. However, there are several new requirements in the proposed rule as follows:

- Under subpart A, (§ 250.107(c)), we have added proposed BAST requirements (+10 hours).
- Under General Requirements (§ 250.802–803), we have added proposed SPPE life cycle analysis requirements (+132 hours).
- A proposed new section, Subsea and Subsurface Safety Systems—Subsea Trees (§§ 250.825–833) would add new burden requirements (+24 hours).
- Under Production Safety Systems (§ 250.842), we added proposed certification requirements as well as documentation of these requirements (+608 hours).
- In various proposed requirements, requests for unique, specific approvals (+61 hours).
- A proposed new section, (§ 250.861(b)) would add new requirements pertaining to submission of foam samples annually for testing (+1,000 hours).
- A proposed new section, (§ 250.867) would add new requirements pertaining to submittals for temporary quarters, firewater systems, or equipment (+307 hours).
- A proposed new section, (§ 250.870) added documentation requirements (+3 hours).
- In § 250.860, we proposed submittal notification and/or recordkeeping of minor and major changes using chemical only fire prevention system (+7 hours).
- Proposed new, (§ 250.890) added an annual contact list submittal (+550 hours).

Current subpart H regulations have 62,963 hours and $343,794 non-hour cost burdens approved by OMB. This revision to the collection requests a total of 65,665 hours which is a burden hour net increase of 2,702 hours. The non-hour cost burdens are unchanged. With the exception of items identified as NEW in the following chart, the burden estimates shown are those that are estimated for the current subpart H regulations.

Citation 30 CFR 250, subpart A	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
107(c)(2)	NEW: Demonstrate to us that by using BAST the benefits are insufficient to justify the cost.	5	2 justifications	10
Subtotal			2 responses	10
Citation 30 CFR 250 Subpart H and NTL(s)	Reporting and Recordkeeping Requirement	Hour Burden	Average number of annual responses	Annual burden hours
		Non-Hour Cost Burdens*		
General Requirements				
800(a)	Requirements for your production safety system application.	Burden included with specific requirements below.		0
800(a); 880(a)	Prior to production, request approval of pre-production inspection; notify BSEE 72 hours before commencement so we may witness preproduction test and conduct inspection.	1	76 requests	76

Citation 30 CFR 250, subpart A	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
801(c)	Request evaluation and approval [OORP] of other quality assurance programs covering manufacture of SPPE.	2	1 request	2
802(c)(1); 852(e)(4); 861(b)	NEW: Submit statement/certification for: exposure functionality; pipe is suitable and manufacturer has complied with IVA; suitable firefighting foam per original manufacturer specifications.	Not considered IC under 5 CFR 1320.3(h)(1).		0
802(c)(5)	NEW: Document all manufacturing, traceability, quality control, and inspection requirements. Retain required documentation until 1 year after the date of decommissioning the equipment.	2	30 documents	60
803(a)	NEW: Within 30 days of discovery and identification of SPPE failure, provide a written report of equipment failure to manufacturer.	2	10 reports	20
803(b)	NEW: Document and determine the results of the SPPE failure within 60-days and corrective action taken.	5	10 documents	50
803(c)	NEW: Submit [OORP] modified procedures you made if notified by manufacturer of design changes or you changed operating or repair procedures as result of a failure, within 30 days.	2	1 submittal	2
804	Submit detailed info regarding installing SSVs in an HPHT environment with your APD, APM, DWOP etc.	Burdens are covered under 30 CFR Part 250, Subparts D and B, 1014–0018 and 1014–0024.		0
804(b); 829(b), (c); 841(b)	NEW: District Manager will approve on a case-by-case basis.	Not considered IC per 5 CFR 1320.3(h)(6).		0
Subtotal			128 responses	210
Surface and Subsurface Safety Systems—Dry Trees				
810; 816; 825(a); 830	Submit request for a determination that a well is incapable of natural flow.	5¾	41 wells	246
	Verify the no-flow condition of the well annually	¼		
814(a); 821; 828(a); 838(c)(3); 859(b); 870(b).	Specific alternate approval requests requiring approval	Burden covered under 30 CFR part 250, subpart A, 1014–0022.		0
817(b); 869(a)	Identify well with sign on wellhead that subsurface safety device is removed; flag safety devices that are out of service; a visual indicator must be used to identify the bypassed safety device.	Usual/customary safety procedure for removing or identifying out-of-service safety devices.		0
817(b)	Record removal of subsurface safety device	Burden included in § 250.890 of this subpart.		0
817(c)	Request alternate approval of master valve [required to be submitted with an APM].	Burden covered under 30 CFR part 250, subpart D, 1014–0018.		0
Subtotal			41 responses	246
Subsea and Subsurface Safety Systems—Subsea Trees				
825(b); 831; 833; 837(c)(5); 838(c); 874(g)(2); 874(f).	NEW: Notify BSEE: (1) If you cannot test all valves and sensors; (2) 48 hours in advance if monitoring ability affected; (3) designating USV2 or another qualified valve; (4) resuming production; (5) 12 hours of detecting loss of communication; immediately if you cannot meet value closure conditions.	Notifications (1) ½ (2) 2 (3) 1 (4) ½ (5) ½	6 1 1 1 1	7
827	NEW: Request remote location approval	1	1 request	1

Citation 30 CFR 250, subpart A	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
831	NEW: Submit a repair/replacement plan to monitor and test.	2	1 submittal	2
837(a)	NEW: Request approval to not shut-in a subsea well in an emergency.	½	10 requests	5
837(b)	NEW: Prepare and submit for approval a plan to shut-in wells affected by a dropped object.	2	1 submittal	2
837(c)(2)	NEW: Obtain approval to resume production re P/L PSHL sensor.	½	2 approvals	1
838(a); 839(a)(2)	NEW: Verify closure time of USV upon request of District Manager.	2	2 verifications	4
838(c)(3)	NEW: Request approval to produce after loss of communication; include alternate valve closure table.	2	1 approval	2
Subtotal			28 responses	24
	Production Safety Systems			
842	Submit application, and all required/supporting information, for a production safety system with > 125 components.	16	1 application	16
		$5,030 per submission × 1 = $5,030 $13,238 per offshore visit × 1 = $13,238 $6,884 per shipyard visit × 1 = $6,884		
	25–125 components	13	10 applications	130
		$1,218 per submission × 10 = $12,180 $8,313 per offshore visit × 1 = $8,313 $4,766 per shipyard visit × 1 = $4,766		
	< 25 components	8	20 applications	160
		$604 per submission × 20 = $12,080		
	Submit modification to application for production safety system with > 125 components.	9	180 modifications	1,620
		$561 per submission × 180 = $100,980		
	25–125 components	7	758 modifications	5,306
		$201 per submission × 758 = $152,358		
	< 25 components	5	329 modifications	1,645
		$85 per submission × 329 = $27,965		
842(b)	NEW: Your application must also include certification(s) that the designs for mechanical and electrical systems were reviewed, approved, and stamped by registered professional engineer. [**Note:** Upon promulgation, these certification production safety systems requirements will be consolidated into the application hour burden for the specific components].	6	32 certifications	192
842(c)	NEW: Submit a certification letter that the mechanical and electrical systems were installed in accordance with approved designs.	6	32 letters	192
842(d), (e)	NEW: Submit a certification letter within 60-days after production that the as-built diagrams, piping, and instrumentation diagrams are on file, certified correct, and stamped by a registered professional engineer; submit all the as-built diagrams.	6 ½	32 letters	208

Citation 30 CFR 250, subpart A	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
842(f)	NEW: Maintain records pertaining to approved design and installation features and as-built pipe and instrumentation diagrams at your offshore field office or location available to the District Manager; make available to BSEE upon request and retained for the life of the facility.	½	32 records	16
Subtotal			1,426 responses	9,485
			$343,794 non-hour cost burdens	
Additional Production System Requirements				
851(a)(4)	NEW: Request approval to use uncoded pressure and fired vessels beyond their 18 months of continued use.	2	1 request	2
851(b); 852(a)(3); 858(c); 865(b).	Maintain [most current] pressure-recorder information at location available to the District Manager for as long as information is valid.	23	615 records	14,145
851(c)(2)	NEW: Request approval from District Manager for activation limits set less than 5 psi.	1	10 requests	10
852(c)(1)	NEW: Request approval from District Manager to vent to some other location.	1	10 requests	10
852(c)(2)	NEW: Request a different sized PSV	1	1 request	5
852(c)(2)	NEW: Request different upstream location of the PSV.	1	5 request	5
852(e)	Submit required design documentation for unbonded flexible pipe.	Burden is covered by the application requirement in § 250.842.		0
855(b)	Maintain ESD schematic listing control function of all safety devices at location conveniently available to the District Manager for the life of the facility.	15	615 listings	9,225
858(b)	NEW: Request approval from District Manager to use different procedure for gas-well gas affected.	1	1 request	1
859(a)(2)	Request approval for alternate firefighting system	Burden covered under 30 CFR part 250, subpart A, 1014–0022.		0
859(a)(3), (4)	Post diagram of firefighting system; furnish evidence firefighting system suitable for operations in subfreezing climates.	5	38 postings	190
859(b)	NEW: Request extension from District Manager up to 7 days of your approved departure to use chemicals.	Burden covered under 30 CFR part 250, subpart A, 1014–0022.		0
860(a); related NTL(s)	Request approval, including but not limited to, submittal of justification and risk assessment, to use chemical only fire prevention and control system in lieu of a water system.	22	31 requests	682
860(b)	NEW: Minor change(s) made after approval rec'd re 860(a)—document change; maintain the revised version at facility or closest field office for BSEE review/inspection; maintain for life of facility.	½	10 minor changes	5
860(b)	NEW: Major change(s) made after approval rec'd re 860(a)—submit new request w/updated risk assessment to District Manager for approval; maintain at facility or closest field office for BSEE review/inspection; maintain for life of facility.	2	1 major change	2
861(b)	NEW: Submit foam concentrate samples annually to manufacturer for testing.	2	500 submittals	1,000
864	Maintain erosion control program records for 2 years; make available to BSEE upon request.	12	615 records	7,380

Citation 30 CFR 250, subpart A	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
867(a)	NEW: Request approval from District Manager to install temporary quarters.	6	1 request	6
867(b)	NEW: Submit supporting information/documentation if required by District Manager to install a temporary firewater system.	1	1 request	1
867(c)	NEW: Request approval form District manager to use temporary equipment for well testing/clean-up.	1	300 requests	300
869(a)(3)	NEW: Request approval from District Manager to bypass an element of ESS.	1	2 requests	2
870	NEW: Document PSL on your field test records w/ delay greater than 45 seconds.	½	6 records	3
871	Request variance from District Manager on approved welding and burning practices.	Burden covered under 30 CFR part 250, subpart A—1014–0022.		0
874(g)(2), (3)	NEW: Submit request to District Manager with alternative plan ensuring subsea shutdown capability.	2	5 requests	10
874(g)(3)	NEW: Request approval from District Manager to forgo WISDV testing.	1	10 requests	10
874(f)(2)	NEW: Request approval from District Manager to continue to inject w/loss of communication.	1	5 requests	5
874(f)(2)	NEW: Request alternate hydraulic bleed schedule	Burden covered under 30 CFR part 250, subpart A, 1014–0022.		0
Subtotal			2,783 responses	32,999
	Safety Device Testing			
880(a)(3)	NEW: Notify BSEE and receive approval before performing modifications to existing subsea infrastructure.	Burden covered under 30 CFR part 250, subpart A 1014–0022.		0
880(c)(5)(vi)	NEW: Request approval for disconnected well shut-in to exceed more than 2 years.	1	1 request	1
Subtotal			1 response	1
	Records and Training			
890	Maintain records for 2 years on subsurface and surface safety devices to include, but limited to, status and history of each device; approved design & installation date and features, inspection, testing, repair, removal, adjustments, reinstallation, etc.; at field office nearest facility AND a secure onshore location; make records available to BSEE.	36	615 records	22,140
890(c)	NEW: Submit annually to District Manager a contact list for all OCS operated platforms or submit when revised.	½ ½	1,000 annual lists 100 revised lists	550
Subtotal			1,715 responses	22,690
Total Burden Hours			6,124 Responses	65,665
			$343,794 Non-Hour Cost Burdens	

The BSEE specifically solicits comments on the following:

(1) Is the IC necessary or useful for us to perform properly; (2) is the proposed burden accurate; (3) are there suggestions that will enhance the quality, usefulness, and clarity of the information to be collected; and (4) can we minimize the burden on the respondents, including the use of technology.

In addition, the PRA requires agencies to also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation,

maintenance, and purchase of service components. Generally, your estimate should not include burdens other than those associated with the provision of information to, or recordkeeping for the government; or burdens that are part of customary and usual business or private practices. For further information on this non-hour burden estimation process, refer to 5 CFR 1320.3(b)(1) and (2), or contact the BSEE Bureau Information Collection Clearance Officer.

National Environmental Policy Act of 1969

We prepared an environmental assessment to determine whether this proposed rule would have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because we reached a Finding of No Significant Impact (FONSI). A copy of the FONSI and Environmental Assessment can be viewed at *www.Regulations.gov* (use the keyword/ID "BSEE–2012–0005").

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Nation's Energy Supply (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation (Executive Order 12866)

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) use the active voice to address readers directly;

(c) use clear language rather than jargon;

(d) be divided into short sections and sentences; and

(e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur.

Dated: August 6, 2013.

Tommy Beaudreau,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to amend 30 CFR Part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 2. Amend § 250.107 by revising paragraph (c) and removing paragraph (d) to read as follows:

§ 250.107 What must I do to protect health, safety, property, and the environment?

* * * * *

(c)(1) Wherever failure of equipment may have a significant effect on safety, health, or the environment, you must use the best available and safest technology (BAST) that BSEE determines to be economically feasible on:

(i) All new drilling and production operations and

(ii) Wherever practicable, on existing operations.

(2) You may request an exception by demonstrating to BSEE that the incremental benefits of using BAST are clearly insufficient to justify the incremental costs of utilizing such technologies.

■ 3. Revise § 250.125(a)(10), (11), (12), (13), (14), and (15) to read as follows:

§ 250.125 Service fees.

(a) * * *

Service—processing of the following:	Fee amount	30 CFR citation
*	*	*
(10) New Facility Production Safety System Application for facility with more than 125 components.	$5,030 A component is a piece of equipment or ancillary system that is protected by one or more of the safety devices required by API RP 14C (as incorporated by reference in § 250.198); $13,238 additional fee will be charged if BSEE deems it necessary to visit a facility offshore, and $6,884 to visit a facility in a shipyard.	§ 250.842
(11) New Facility Production Safety System Application for facility with 25–125 components.	$1,218 Additional fee of $8,313 will be charged if BSEE deems it necessary to visit a facility offshore, and $4,766 to visit a facility in a shipyard.	§ 250.842
(12) New Facility Production Safety System Application for facility with fewer than 25 components.	$604	§ 250.842
(13) Production Safety System Application—Modification with more than 125 components reviewed.	$561	§ 250.842

Service—processing of the following:	Fee amount	30 CFR citation
(14) Production Safety System Application—Modification with 25–125 components reviewed.	$201	§ 250.842
(15) Production Safety System Application—Modification with fewer than 25 components reviewed..	$85	§ 250.842

■ 4. Amend § 250.198 as follows:
■ a. Remove paragraphs (g)(6) and (g)(7);
■ b. Redesignate paragraph (g)(8) as (g)(6);
■ c. Revise paragraphs (g)(1) through (g)(3), (h)(1), (h)(51) through (h)(53), (h)(55) through (h)(62), (h)(65), (h)(66), (h)(68), (h)(70), (h)(71), (h)(73), and (h)(74); and
■ d. Add new paragraph (h)(89) to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(g) * * *

(1) ANSI/ASME Boiler and Pressure Vessel Code, Section I, Rules for Construction of Power Boilers: including Appendices, 2004 Edition; and July 1, 2005 Addenda, and all Section I Interpretations Volume 55, incorporated by reference at §§ 250.851(a)(1)(i), (a)(4)(iii), (a)(5)(i), and 250.1629(b)(1), (b)(1)(i).

(2) ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Rules for Construction of Heating Boilers: including Appendices 1, 2, 3, 5, 6, and Non-mandatory Appendices B, C, D, E, F, H, I, K, L, and M, and the Guide to Manufacturers Data Report Forms, 2004 Edition; July 1, 2005 Addenda, and all Section IV Interpretations Volume 55, incorporated by reference at §§ 250.851(a)(1)(i), (a)(4)(iii), (a)(5)(i), and 250.1629(b)(1), (b)(1)(i).

(3) ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Pressure Vessels; Divisions 1 and 2, 2004 Edition; July 1, 2005 Addenda, Divisions 1, 2, and 3 and all Section VIII Interpretations Volumes 54 and 55, incorporated by reference at §§ 250.851(a)(1)(i), (a)(4)(iii), (a)(5)(i), and 250.1629(b)(1), (b)(1)(i).

* * * * *

(h) * * *

(1) API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, Downstream Segment, Ninth Edition, June 2006, Product No. C51009; incorporated by reference at §§ 250.851(a)(1)(ii) and 250.1629(b)(1);

* * * * *

(51) API RP 2RD, Recommended Practice for Design of Risers for Floating Production Systems (FPSs) and Tension-Leg Platforms (TLPs), First Edition, June 1998; reaffirmed, May 2006, Errata, June 2009; Order No. G02RD1; incorporated by reference at §§ 250.800(c)(2), 250.901(a), (d), and 250.1002(b)(5);

(52) API RP 2SK, Recommended Practice for Design and Analysis of Stationkeeping Systems for Floating Structures, Third Edition, October 2005, Addendum, May 2008, Product No. G2SK03; incorporated by reference at §§ 250.800(c)(3) and 250.901(a), (d);

(53) API RP 2SM, Recommended Practice for Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring, First Edition, March 2001, Addendum, May 2007; incorporated by reference at §§ 250.800(c)(3) and 250.901;

* * * * *

(55) API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, ANSI/API Recommended Practice 14B, Fifth Edition, October 2005, also available as ISO 10417: 2004, (Identical) Petroleum and natural gas industries—Subsurface safety valve systems—Design, installation, operation and redress, Product No. GX14B05; incorporated by reference at §§ 250.802(b), 250.803(a), 250.814(d), 250.828(c), and 250.880(c)(1)(i), (c)(4)(i), (c)(5)(ii)(A);

(56) API RP 14C, Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Seventh Edition, March 2001, Reaffirmed: March 2007; Product No. C14C07; incorporated by reference at §§ 250.125(a)(10), 250.292(j), 250.841(a), 250.842(a)(2), 250.850, 250.852(a)(1), 250.855, 250.858(a), 250.862(e), 250.867(a), 250.869(a)(3), (b), (c), 250.872(a), 250.873(a), 250.874(a), 250.880(b)(2), (c)(2)(v), 250.1002(d), 250.1004(b)(9), 250.1628(c), (d)(2), 250.1629(b)(2), (b)(4)(v), and 250.1630(a);

(57) API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fifth Edition, October 1991; Reaffirmed, March 2007, Order No. 811–07185; incorporated by reference at §§ 250.841(b), 250.842(a)(1), and 250.1628(b)(2), (d)(3);

(58) API RP 14F, Recommended Practice for Design, Installation, and Maintenance of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class 1, Division 1 and Division 2 Locations, Upstream Segment, Fifth Edition, July 2008, Product No. G14F05; incorporated by reference §§ 250.114(c), 250.842(b)(1), 250.862(e), and 250.1629(b)(4)(v);

(59) API RP 14FZ, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1 and Zone 2 Locations, First Edition, September 2001, Reaffirmed: March 2007; Product No. G14FZ1; incorporated by reference at §§ 250.114(c), 250.842(b)(1), 250.862(e), and 250.1629(b)(4)(v);

(60) API RP 14G, Recommended Practice for Fire Prevention and Control on Fixed Open-type Offshore Production Platforms, Fourth Edition, April 2007; Product No. G14G04; incorporated by reference at §§ 250.859(a), 250.862(e), and 250.1629(b)(3), (b)(4)(v);

(61) API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, Fifth Edition, August 2007, Product No. G14H05; incorporated by reference at §§ 250.820, 250.834, 250.836, and 250.880(c)(2)(iv), (c)(4)(iii);

(62) API RP 14J, Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities, Second Edition, May 2001; Reaffirmed: March 2007: Product No. G14J02; incorporated by reference at §§ 250.800(b), (c)(1), 250.842(b)(3), and 250.901(a)(14);

* * * * *

(65) API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, Second Edition, November 1997; Errata August 17, 1998,

Reaffirmed November 2002, API Stock No. C50002; incorporated by reference at §§ 250.114(a), 250.459, 250.842(a)(1), (a)(3)(i), 250.862(a), (e), 250.872(a), 250.1628(b)(3), (d)(4)(i), and 250.1629(b)(4)(i);

(66) API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1, and Zone 2, First Edition, November 1997; Errata August 17, 1998, American National Standards Institute, ANSI/API RP 505–1998, Approved: January 7, 1998, Order No. C50501; incorporated by reference at §§ 250.114(a), 250.459, 250.842(a)(1), (a)(3)(i), 250.862(a), (e), 250.872(a), 250.1628(b)(3), (d)(4)(i), and 250.1629(b)(4)(i);

* * * * *

(68) ANSI/API Spec. Q1, Specification for Quality Programs for the Petroleum, Petrochemical and Natural Gas Industry, Eighth Edition, December 2007, Effective Date: June 15, 2008, Addendum 1, June 2010, Effective Date: December 1, 2010; also available as ISO TS 29001:2007 (Identical), Petroleum, petrochemical and natural gas industries—Sector specific requirements—Requirements for product and service supply organizations, Effective Date: December 15, 2003, API Stock No. GQ1007; incorporated by reference at § 250.801(b), (c);

* * * * *

(70) API Spec. 6A, Specification for Wellhead and Christmas Tree Equipment, Nineteenth Edition, July 2004, Effective Date: February 1, 2005; Contains API Monogram Annex as part of US National Adoption; also available as ISO 10423:2003 (Modified), Petroleum and natural gas industries—Drilling and production equipment—Wellhead and Christmas tree equipment; Errata 1, September 2004, Errata 2, April 2005, Errata 3, June 2006, Errata 4, August 2007, Errata 5, May 2009, Addendum 1, February 2008, Addendum 2, December 2008, Addendum 3, December 2008, Addendum 4, December 2008, Product No. GX06A19; incorporated by reference at §§ 250.802(a), 250.803(a), 250.873(b), (b)(3)(iii), 250.874(g)(2) and 250.1002 (b)(1), (b)(2);

(71) API Spec. 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, First Edition, February 1, 1996; reaffirmed January 2003, API Stock No. G06AV1; incorporated by reference at §§ 250.802(a), 250.833, 250.873(b) and 250.874(g)(2);

* * * * *

(73) ANSI/API Spec. 14A, Specification for Subsurface Safety Valve Equipment, Eleventh Edition, October 2005, Effective Date: May 1, 2006; also available as ISO 10432:2004 (Identical), Petroleum and natural gas industries—Downhole equipment—Subsurface safety valve equipment, Product No. GX14A11; incorporated by reference at §§ 250.802(b) and 250.803(a)

(74) ANSI/API Spec. 17J, Specification for Unbonded Flexible Pipe, Third Edition, July 2008, Effective Date: January 1, 2009, Contains API Monogram Annex as part of US National Adoption; also available as ISO 13628–2:2006 (Identical), Petroleum and natural gas industries—Design and operation of subsea production systems—Part 2: Unbonded flexible pipe systems for subsea and marine application; Product No. GX17J03; incorporated by reference at §§ 250.852(e)(1), (e)(4), 250.1002(b)(4), and 250.1007(a)(4)(i)(D).

* * * * *

(89) API 570 Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems, Third Edition, November 2009; Product No. C57003; incorporated by reference at § 250.841(b).

■ 5. Revise § 250.517(e) to read as follows:

§ 250. 517 Tubing and wellhead equipment.

* * * * *

(e) Subsurface safety equipment must be installed, maintained, and tested in compliance with the applicable sections in §§ 250.810 through 250.839 of this part.

■ 6. Revise § 250.618(e) to read as follows:

§ 250.618 Tubing and wellhead equipment.

* * * * *

(e) Subsurface safety equipment must be installed, maintained, and tested in compliance with the applicable sections in §§ 250.810 through 250.839 of this part.

■ 7. Revise subpart H to read as follows:

Subpart H—Oil and Gas Production Safety Systems

General Requirements

Sec.

Surface and Subsurface Safety Systems—Dry Trees

Subsea and Subsurface Safety Systems—Subsea Trees

Production Safety Systems

General Requirements

§ 250.800 General.

(a) You must design, install, use, maintain, and test production safety equipment in a manner to ensure the safety and protection of the human, marine, and coastal environments. For production safety systems operated in subfreezing climates, you must use equipment and procedures that account for floating ice, icing, and other extreme environmental conditions that may occur in the area. You must not commence production until BSEE approves your production safety system application and you have requested a preproduction inspection.

(b) For all new production systems on fixed leg platforms, you must comply with API RP 14J, Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities (incorporated by reference as specified in § 250.198);

(c) For all new floating production systems (FPSs) (*e.g.*, column-stabilized-units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); spars, etc.), you must:

(1) Comply with API RP 14J;

(2) Meet the drilling, well completion, well workover, and well production riser standards of API RP 2RD, Recommended Practice for Design of Risers for Floating Production Systems (FPSs) and Tension-Leg Platforms (TLPs) (incorporated by reference as specified in § 250.198). Beginning 1 year from the publication date of the final rule and thereafter, you are prohibited from installing single bore production risers from floating production facilities.

(3) Design all stationkeeping systems for floating production facilities to meet the standards of API RP 2SK, Design and Analysis of Stationkeeping Systems for Floating Structures and API RP 2SM, Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring (both incorporated by reference as specified in § 250.198), as well as relevant U.S. Coast Guard regulations; and

(4) Design stationkeeping systems for floating facilities to meet the structural requirements of §§ 250.900 through 250.921.

§ 250.801 Safety and pollution prevention equipment (SPPE) certification.

(a) *SPPE equipment.* In wells located on the OCS, you must install only safety and pollution prevention equipment (SPPE) considered certified under paragraph (b) of this section or accepted under paragraph (c) of this section. The BSEE considers the following equipment to be types of SPPE:

(1) Surface safety valves (SSV) and actuators, including those installed on injection wells capable of natural flow;

(2) Boarding shut down valves (BSDV), 1 year after the date of publication of the final rule;

(3) Underwater safety valves (USV) and actuators; and

(4) Subsurface safety valves (SSSV) and associated safety valve locks and landing nipples. Subsurface-controlled SSSVs are not allowed on subsea wells.

(b) *Certification of SPPE.* SPPE equipment that is manufactured and marked pursuant to API Spec. Q1, Specification for Quality Programs for the Petroleum, Petrochemical and Natural Gas Industry (ISO TS 29001:2007) (incorporated by reference as specified in § 250.198), is considered certified SPPE under this part. The BSEE considers all other SPPE as noncertified unless approved in accordance with 250.801(c).

(c) *Accepting SPPE manufactured under other quality assurance programs.* The BSEE may exercise its discretion to accept SPPE manufactured under quality assurance programs other than API Spec. Q1 (ISO TS 29001:2007), provided an operator submits a request to BSEE containing relevant information about the alternative program under § 250.141, and receives BSEE approval. Such requests should be submitted to the Chief, Office of Offshore Regulatory Programs; Bureau of Safety and Environmental Enforcement; HE 3314; 381 Elden Street; Herndon, Virginia 20170–4817.

§ 250.802 Requirements for SPPE.

(a) All SSVs, BSDVs, and USVs must meet all of the specifications contained in API/ANSI Spec. 6A, Specification for Wellhead and Christmas Tree Equipment, (ISO 10423:2003); and Spec. 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service (both incorporated by reference as specified in § 250.198).

(b) All SSSVs must meet all of the specifications and recommended practices of API/ANSI Spec. 14A, Specification for Subsurface Safety Valve Equipment (ISO 10432:2004) and ANSI/API RP 14B, Recommended Practice for Design, Installation, and Operation of Subsurface Safety Valve Systems (ISO 10417:2004), including all Annexes (both incorporated by reference as specified in § 250.198).

(c) Requirements derived from the documents incorporated in this section for SSVs, BSDVs, USVs, and SSSVs, include, but are not limited to, the following:

(1) Each device must be designed to function and to close at the most extreme conditions to which it may be exposed, including temperature, pressure, flow rates, and environmental conditions. You must have an independent third party review and certify that each device will function as designed under the conditions to which it may be exposed. The independent third party must have sufficient expertise and experience to perform the review and certification.

(2) All materials and parts must meet the original equipment manufacturer specifications and acceptance criteria.

(3) The device must pass applicable validation tests and functional tests performed by an API-licensed test agency.

(4) You must have requalification testing performed following manufacture design changes.

(5) You must comply with and document all manufacturing, traceability, quality control, and inspection requirements.

(6) You must follow specified installation, testing, and repair protocols.

(7) You must use only qualified parts, procedures, and personnel to repair or redress equipment.

(d) You must install certified SPPE according to the following table.

If . . .	Then . . .
(1) You need to install any SPPE	You must install certified SPPE.
(2) A non-certified SPPE is already in service	It may remain in service on that well.
(3) A non-certified SPPE requires offsite repair, re-manufacturing, or any hot work such as welding.	You must replace it with certified SPPE.

(e) You must retain all documentation related to the manufacture, installation, testing, repair, redress, and performance of the SPPE equipment until 1 year after the date of decommissioning of the equipment.

§ 250.803 What SPPE failure reporting procedures must I follow?

(a) You must follow the failure reporting requirements contained in section 10.20.7.4 of API Spec. 6A for SSVs, BSDVs, and USVs and section 7.10 of API Spec. 14A and Annex F of API RP 14B for SSSVs (all incorporated by reference in § 250.198). You must provide a written report of equipment failure to the manufacturer of such equipment within 30 days after the discovery and identification of the failure. A failure is any condition that prevents the equipment from meeting the functional specification.

(b) You must ensure that an investigation and a failure analysis are performed within 60 days of the failure to determine the cause of the failure. You must also ensure that the results and any corrective action are documented. If the investigation and analysis are performed by an entity other than the manufacturer, you must ensure that the manufacturer receives a copy of the analysis report.

(c) If the equipment manufacturer notifies you that it has changed the design of the equipment that failed or if you have changed operating or repair procedures as a result of a failure, then you must, within 30 days of such changes, report the design change or modified procedures in writing to the Chief of Office of Offshore Regulatory Programs; Bureau of Safety and Environmental Enforcement; HE 3314; 381 Elden Street; Herndon, Virginia 20170–4817.

§ 250.804 Additional requirements for subsurface safety valves (SSSVs) and related equipment installed in high pressure high temperature (HPHT) environments.

(a) If you plan to install SSSVs and related equipment in an HPHT environment, you must submit detailed information with your Application for Permit to Drill (APD), Application for Permit to Modify (APM), or Deepwater Operations Plan (DWOP) that demonstrates the SSSVs and related equipment are capable of performing in the applicable HPHT environment. Your detailed information must include the following:

(1) A discussion of the SSSVs' and related equipment's design verification analysis;

(2) A discussion of the SSSVs' and related equipment's design validation and functional testing process and procedures used; and

(3) An explanation of why the analysis, process, and procedures ensure that the SSSVs and related equipment are fit-for-service in the applicable HPHT environment.

(b) For this section, HPHT environment means when one or more of the following well conditions exist:

(1) The completion of the well requires completion equipment or well control equipment assigned a pressure rating greater than 15,000 psig or a temperature rating greater than 350 degrees Fahrenheit;

(2) The maximum anticipated surface pressure or shut-in tubing pressure is greater than 15,000 psig on the seafloor for a well with a subsea wellhead or at the surface for a well with a surface wellhead; or

(3) The flowing temperature is equal to or greater than 350 degrees Fahrenheit on the seafloor for a well with a subsea wellhead or at the surface for a well with a surface wellhead.

(c) For this section, related equipment includes wellheads, tubing heads, tubulars, packers, threaded connections, seals, seal assemblies, production trees, chokes, well control equipment, and any other equipment that will be exposed to the HPHT environment.

§ 250.805 Hydrogen sulfide.

(a) You must conduct production operations in zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown, as defined in § 250.490 of this part, in accordance with that section and other relevant requirements of this subpart.

(b) You must receive approval through the DWOP process (§§ 250.286–250.295) for production operations in HPHT environments known to contain H_2S or in HPHT environments where the presence of H_2S is unknown.

§§ 250.806–250.809 [Reserved]

Surface and Subsurface Safety Systems—Dry Trees

§ 250.810 Dry tree subsurface safety devices—general.

For wells using dry trees or for which you intend to install dry trees, you must equip all tubing installations open to hydrocarbon-bearing zones with subsurface safety devices that will shut off the flow from the well in the event of an emergency unless, after you submit a request containing a justification, the District Manager determines the well to be incapable of natural flow. These subsurface safety devices include the following devices and any associated safety valve lock, flow coupling above and below, and landing nipple:

(a) An SSSV, including either:

(1) A surface-controlled SSSV; or

(2) A subsurface-controlled SSSV.

(b) An injection valve.

(c) A tubing plug.

(d) A tubing/annular subsurface safety device.

§ 250.811 Specifications for subsurface safety valves (SSSVs)—dry trees.

All surface-controlled and subsurface-controlled SSSVs, safety valve locks, landing nipples, and flow couplings installed in the OCS must conform to the requirements in §§ 250.801 through 250.803. You may request that BSEE approve non-conforming SSSVs in accordance with § 250.141, regarding alternative procedures or equipment.

§ 250.812 Surface-controlled SSSVs—dry trees.

You must equip all tubing installations open to a hydrocarbon-bearing zone that is capable of natural flow with a surface-controlled SSSV, except as specified in §§ 250.813, 250.815, and 250.816.

(a) The surface controls must be located on the site or at a BSEE-approved remote location. You may request that BSEE approve situating the surface controls at a remote location in,

accordance with § 250.141, regarding alternative procedures or equipment.

(b) You must equip dry tree wells not previously equipped with a surface-controlled SSSV, and dry tree wells in which a surface-controlled SSSV has been replaced with a subsurface-controlled SSSV with a surface-controlled SSSV when the tubing is first removed and reinstalled.

§ 250.813 Subsurface-controlled SSSVs.

You may request BSEE approval to equip a dry tree well with a subsurface-controlled SSSV in lieu of a surface-controlled SSSV, in accordance with § 250.141 regarding alternative procedures or equipment, if the subsurface-controlled SSSV installed in a well equipped with a surface-controlled SSSV has become inoperable and cannot be repaired without removal and reinstallation of the tubing. If you remove and reinstall the tubing, you must equip the well with a surface-controlled SSSV.

§ 250.814 Design, installation, and operation of SSSVs—dry trees.

You must design, install, operate, repair, and maintain an SSSV to ensure its reliable operation.

(a) You must install the SSSV at a depth at least 100 feet below the mudline within 2 days after production is established. When warranted by conditions such as permafrost, unstable bottom conditions, hydrate formation, or paraffin problems, the District Manager may approve an alternate setting depth in accordance with § 250.141 or § 250.142.

(b) Until the SSSV is installed, the well must be attended in the immediate vicinity so that any necessary emergency actions can be taken while the well is open to flow. During testing and inspection procedures, the well must not be left unattended while open to production unless you have installed a properly operating SSSV in the well.

(c) The well must not be open to flow while the SSSV is removed, except when flowing the well is necessary for a particular operation such as cutting paraffin or performing other routine operations as defined in § 250.601.

(d) You must install, maintain, inspect, repair, and test all SSSVs in accordance with API RP 14B, Recommended Practice for Design, Installation, and Operation of Subsurface Safety Valve Systems (ISO 10417:2004) (incorporated by reference as specified in § 250.198).

§ 250.815 Subsurface safety devices in shut-in wells—dry trees.

(a) You must equip all new dry tree completions (perforated but not placed on production) and completions shut-in for a period of 6 months with one of the following:

(1) A pump-through-type tubing plug;

(2) A surface-controlled SSSV, provided the surface control has been rendered inoperative; or

(3) An injection valve capable of preventing backflow.

(b) When warranted by conditions such as permafrost, unstable bottom conditions, hydrate formation, and paraffin problems the District Manager will approve the setting depth of the subsurface safety device for a shut-in well on a case-by-case basis.

§ 250.816 Subsurface safety devices in injection wells—dry trees.

You must install a surface-controlled SSSV or an injection valve capable of preventing backflow in all injection wells. This requirement is not applicable if the District Manager determines that the well is incapable of natural flow. You must verify the no-flow condition of the well annually.

§ 250.817 Temporary removal of subsurface safety devices for routine operations.

(a) You may remove a wireline- or pumpdown-retrievable subsurface safety device without further authorization or notice, for a routine operation that does not require BSEE approval of a Form BSEE–0124, Application for Permit to Modify (APM). For a list of these routine operations, see § 250.601. The removal period must not exceed 15 days.

(b) You must identify the well by placing a sign on the wellhead stating that the subsurface safety device was removed. You must note the removal of the subsurface safety device in the records required by § 250.890. If the master valve is open, you must ensure that a trained person (see § 250.891) is in the immediate vicinity to attend the well and take any necessary emergency actions.

(c) You must monitor a platform well when a subsurface safety device has been removed, but a person does not need to remain in the well-bay area continuously if the master valve is closed. If the well is on a satellite structure, it must be attended with a support vessel or a pump-through plug installed in the tubing at least 100 feet below the mudline, and the master valve must be closed, unless otherwise approved by the appropriate District Manager.

(d) You must not allow the well to flow while the subsurface safety device is removed, except when it is necessary for the particular operation for which the SSSV is removed. The provisions of this paragraph are not applicable to the testing and inspection procedures specified in § 250.880.

§ 250.818 Additional safety equipment—dry trees.

(a) You must equip all tubing installations that have a wireline- or pumpdown-retrievable subsurface safety device with a landing nipple, with flow couplings or other protective equipment above and below it to provide for the setting of the device.

(b) The control system for all surface-controlled SSSVs must be an integral part of the platform emergency shutdown system (ESD).

(c) In addition to the activation of the ESD by manual action on the platform, the system may be activated by a signal from a remote location. Surface-controlled SSSVs must close in response to shut-in signals from the ESD and in response to the fire loop or other fire detection devices.

§ 250.819 Specification for surface safety valves (SSVs).

All wellhead SSVs and their actuators must conform to the requirements specified in §§ 250.801 through 250.803.

§ 250.820 Use of SSVs.

You must install, maintain, inspect, repair, and test all SSVs in accordance with API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore (incorporated by reference as specified in § 250.198). If any SSV does not operate properly, or if any fluid flow is observed during the leakage test, then you must shut-in all sources to the SSV and repair or replace the valve before resuming production.

§ 250.821 Emergency action.

(a) In the event of an emergency, such as an impending named tropical storm or hurricane:

(1) Any well not yet equipped with a subsurface safety device and that is capable of natural flow must have the subsurface safety device properly installed as soon as possible, with due consideration being given to personnel safety.

(2) You must shut-in all oil wells and gas wells requiring compression, unless otherwise approved by the District Manager in accordance with §§ 250.141 or 250.142. The shut-in may be accomplished by closing the SSV and SSSV.

(b) Closure of the SSV must not exceed 45 seconds after automatic detection of an abnormal condition or actuation of an ESD. The surface-controlled SSSV must close within 2

minutes after the shut-in signal has closed the SSV. The District Manager must approve any design-delayed closure time greater than 2 minutes based on the mechanical/production characteristics of the individual well or subsea field in accordance with §§ 250.141 or 250.142.

§§ 250.822–250.824 [Reserved]

Subsea and Subsurface Safety Systems—Subsea Trees

§ 250.825 Subsea tree subsurface safety devices—general.

(a) For wells using subsea (wet) trees or for which you intend to install subsea trees, you must equip all tubing installations open to hydrocarbon-bearing zones with subsurface safety devices that will shut off the flow from the well in the event of an emergency unless. You may seek BSEE approval for using alternative procedures or equipment in accordance with § 250.141 if you propose to use a subsea safety system that is not capable of shutting off the flow from the well in the event of an emergency, for instance where the well at issue is incapable of natural flow. Subsurface safety devices include the following and any associated safety valve lock, flow coupling above and below, and landing nipple:

(1) A surface-controlled SSSV;

(2) An injection valve;

(3) A tubing plug; and

(4) A tubing/annular subsurface safety device.

(b) After installing the subsea tree, but before the rig or installation vessel leaves the area, you must test all valves and sensors to ensure that they are operating as designed and meet all the conditions specified in this subpart. If you cannot perform these tests, you may seek BSEE approval for a departure from this operating requirement under § 250.142

§ 250.826 Specifications for SSSVs—subsea trees.

All SSSVs, safety valve locks, flow couplings, and landing nipples must conform to the requirements specified in §§ 250.801 through 250.803 and any Deepwater Operations Plan (DWOP) required by §§ 250.286 through 250.295.

§ 250.827 Surface-controlled SSSVs—subsea trees.

All tubing installations open to a hydrocarbon-bearing zone that is capable of natural flow must be equipped with a surface-controlled SSSV, except as specified in §§ 250.829 and 250.830. The surface controls must be located on the site, or you may seek BSEE approval for locating the controls at a remote location in a request to use alternative procedures or equipment under § 250.141.

§ 250.828 Design, installation, and operation of SSSVs—subsea trees.

You must design, install, operate, and maintain an SSSV to ensure its reliable operation.

(a) You must install the SSSV at a depth at least 100 feet below the mudline. When warranted by conditions such as unstable bottom conditions, hydrate formation, or paraffin problems, you may seek BSEE approval for an alternate setting depth in a request to use alternative procedures or equipment under § 250.141.

(b) The well must not be open to flow while an SSSV is inoperable.

(c) You must install, maintain, inspect, repair, and test all SSSVs in accordance with your Deepwater Operations Plan (DWOP) and API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems (ISO 10417:2004) (incorporated by reference as specified in § 250.198).

§ 250.829 Subsurface safety devices in shut-in wells—subsea trees.

(a) You must equip new completions (perforated but not placed on production) and completions shut-in for a period of 6 months with either:

(1) A pump-through-type tubing plug;

(2) An injection valve capable of preventing backflow; or

(3) A surface-controlled SSSV, provided the surface control has been rendered inoperative. For purposes of this section, a surface-controlled SSSV is considered inoperative if for a direct hydraulic control system you have bled the hydraulics from the control line and have isolated it from the hydraulic control pressure or if your controls employ an electro-hydraulic control umbilical and the hydraulic control pressure to the individual well cannot be isolated, and you perform the following:

(i) Disable the control function of the surface-controlled SSSV within the logic of the programmable logic controller which controls the subsea well;

(ii) Place a pressure alarm high on the control line to the surface-controlled SSSV of the subsea well; and

(iii) Close the USV and at least one other tree valve on the subsea well.

(b) The appropriate BSEE District Manager may consider alternate methods on a case-by-case basis.

(c) When warranted by conditions such as unstable bottom conditions, hydrate formations, and paraffin problems, you may seek BSEE approval to use an alternate setting depth of the subsurface safety device for shut-in wells in a request to use alternative procedures or equipment under 250.141.

§ 250.830 Subsurface safety devices in injection wells—subsea trees.

You must install a surface-controlled SSSV or an injection valve capable of preventing backflow in all injection wells. This requirement is not applicable if the District Manager determines that the well is incapable of natural flow. You must verify the no-flow condition of the well annually.

§ 250.831 Alteration or disconnection of subsea pipeline or umbilical

If a necessary alteration or disconnection of the pipeline or umbilical of any subsea well affects your ability to monitor casing pressure or to test any subsea valves or equipment, you must contact the appropriate BSEE District Office at least 48 hours in advance and submit a repair or replacement plan to conduct the required monitoring and testing. You must not alter or disconnect until the repair or replacement plan is approved.

§ 250.832 Additional safety equipment—subsea trees.

(a) You must equip all tubing installations that have a wireline- or pumpdown-retrievable subsurface safety device installed after May 31, 1988, with a landing nipple, with flow couplings, or other protective equipment above and below it to provide for the setting of the SSSV.

(b) The control system for all surface-controlled SSSVs must be an integral part of the platform ESD.

(c) In addition to the activation of the ESD by manual action on the platform, the system may be activated by a signal from a remote location.

§ 250.833 Specification for underwater safety valves (USVs).

All USVs, including those designated as primary or secondary and any alternate isolation valve (AIV) that acts as a USV, if applicable, and their actuators must conform to the requirements specified in §§ 250.801 through 250.803. A production master or wing valve may qualify as a USV under API Spec. 6AV1 (incorporated by reference as specified in § 250.198).

(a) Primary USV (USV1). You must install and designate one USV on a subsea tree as the USV1. The USV1 must be located upstream of the choke valve.

(b) Secondary USV (USV2). You may equip your tree with two or more valves

qualified to be designated as a USV, one of which may be designated as USV2. If the USV1 fails to operate properly or exhibits a leakage rate greater than allowed in § 250.880, you must notify the appropriate BSEE District Office and designate the USV2 or another qualified valve (*e.g.*, an AIV) that meets all the requirements of this subpart for USVs as the USV1. This valve must be located upstream of the choke to be designated as a USV.

§ 250.834 Use of USVs.

You must install, maintain, inspect, repair, and test all USVs, including those designated as primary or secondary, and any AIV which acts as a USV if applicable in accordance with this subpart, your DWOP as specified in §§ 250.286 through 250.295, and API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore (incorporated by reference as specified in § 250.198).

§ 250.835 Specification for all boarding shut down valves (BSDVs) associated with subsea systems.

You must install a BSDV on the pipeline boarding riser. All BSDVs and their actuators installed in the OCS must meet the requirements specified in §§ 250.801 through 250.803 and the following requirements. You must:

(a) Ensure that the internal design pressure of the pipeline(s), riser(s), and BSDV(s) is fully rated for the maximum pressure of any input source and comply with the design requirements set forth in Subpart J, unless BSEE approves an alternate design.

(b) Use a BSDV that is fire rated for 30 minutes, and is pressure rated for the maximum allowable operating pressure (MAOP) approved in your pipeline application.

(c) Locate the BSDV within 10 feet of the first point of access to the boarding pipeline riser (*i.e.*, within 10 feet of the edge of platform if the BSDV is horizontal, or within 10 feet above the first accessible working deck, excluding the boat landing and above the splash zone, if the BSDV is vertical).

(d) Install a temperature safety element (TSE) and locate it within 5 feet of each BSDV.

§ 250.836 Use of BSDVs.

All BSDVs must be inspected, maintained, and tested in accordance with API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore (incorporated by reference as specified in § 250.198) for SSVs. If any BSDV does not operate properly or if any fluid flow is observed during the leakage test, then you must shut-in all sources to the BSDV and repair or replace it before resuming production.

§ 250.837 Emergency action and safety system shutdown.

(a) In the event of an emergency, such as an impending named tropical storm or hurricane, you must shut-in all subsea wells unless otherwise approved by the District Manager. A shut-in is defined as a closed BSDV, USV, and surface-controlled SSSV.

(b) When operating a mobile offshore drilling unit (MODU) or other type of workover vessel in an area with producing subsea wells, you must:

(1) Suspend production from all such wells that could be affected by a dropped object, including upstream wells that flow through the same pipeline; or

(2) Establish direct, real-time communications between the MODU and the production facility control room and prepare a plan to be submitted to the appropriate District Manager for approval, as part of an application for a permit to drill or an application for permit to modify, to shut-in any wells that could be affected by a dropped object. If an object is dropped, the driller must immediately secure the well directly under the MODU using the ESD on the well control panel located on the rig floor while simultaneously communicating with the platform to shut-in all affected wells. You must also maintain without disruption and continuously verify communication between the platform and the MODU. If communication is lost between the MODU and the platform for 20 minutes or more, you must shut-in all wells that could be affected by a dropped object.

(c) In the event of an emergency, you must operate your production system according to the valve closure times in the applicable tables in §§ 250.838 and 250.839 for the following conditions:

(1) *Process Upset.* In the event an upset in the production process train occurs downstream of the BSDV, you must close the BSDV in accordance with the applicable tables in §§ 250.838 and 250.839. You may reopen the BSDV to blow down the pipeline to prevent hydrates provided you have secured the well(s) and ensured adequate protection.

(2) *Pipeline pressure safety high and low (PSHL) sensor.* In the event that either a high or a low pressure condition is detected by a PSHL sensor located upstream of the BSDV, you must secure the affected well and pipeline, and all wells and pipelines associated with a dual or multi pipeline system by closing the BSDVs, USVs, and surface-controlled SSSVs in accordance with the applicable tables in §§ 250.838 and 250.839. You must obtain approval from the appropriate BSEE District Manager to resume production in the unaffected pipeline(s) of a dual or multi pipeline system. If the PSHL sensor activation was a false alarm, you may return the wells to production without contacting the appropriate BSEE District Manager.

(3) *ESD/TSE (Platform).* In the event of an ESD activation that is initiated because of a platform ESD or platform TSE on the host platform not associated with the BSDV, you must close the BSDV, USV, and surface-controlled SSSV in accordance with the applicable tables in §§ 250.838 and 250.839.

(4) *Subsea ESD (Platform) or BSDV TSE.* In the event of an emergency shutdown activation that is initiated by the host platform due to an abnormal condition subsea, or a TSE associated with the BSDV, you must close the BSDV, USV, and surface-controlled SSSV in accordance with the applicable tables in §§ 250.838 and 250.839.

(5) *Subsea ESD MODU.* In the event of an ESD activation that is initiated by a MODU because of a dropped object from a rig or intervention vessel, you must secure all wells in the proximity of the MODU by closing the USVs and surface-controlled SSSVs in accordance with the applicable tables in §§ 250.838 and 250.839. You must notify the appropriate BSEE District Manager before resuming production.

(d) You must bleed your low pressure (LP) and high pressure (HP) hydraulic systems in accordance with the applicable tables in §§ 250.838 and 250.839 to ensure that the valves are locked out of service following an ESD or fire and cannot be reopened inadvertently.

§ 250.838 What are the maximum allowable valve closure times and hydraulic bleeding requirements for an electro-hydraulic control system?

(a) If you have an electro-hydraulic control system you must:

(1) Design the subsea control system to meet the valve closure times listed in paragraphs (b) and (d) of this section or your approved DWOP; and

(2) Verify the valve closure times upon installation. The BSEE District Manager may require you to verify the closure time of the USV(s) through visual authentication by diver or ROV.

(b) If you have not lost communication with your rig or platform, you must comply with the maximum allowable valve closure times and hydraulic system bleeding

requirements listed in the following table or your approved DWOP:

VALVE CLOSURE TIMING, ELECTRO-HYDRAULIC CONTROL SYSTEM

If you have the following . . .	Your pipeline BSDV must . . .	Your USV1 must . . .	Your USV2 must . . .	Your alternate isolation valve must . . .	Your surface-controlled SSSV must . . .	Your LP hydraulic system must . . .	Your HP hydraulic system must . . .
(1) Process upset.	Close within 45 seconds after sensor activation.	[no requirements]			[no requirements] ...	[no requirements] ...	[no requirements]
(2) Pipeline PSHL.	Close within 45 seconds after sensor activation.	Close one or more valves within 2 minute and 45 seconds after sensor activation. Close the designated USV1 within 20 minutes after sensor activation			Close within 60 minutes after sensor activation. If you use a 60-minute resettable timer, you may continue to reset the time for closure up to a maximum of 24 hours total.	[no requirements] ...	Initiate unrestricted bleed within 24 hours after sensor activation.
(3) ESD/TSE (Platform).	Close within 45 seconds after ESD or sensor activation.	Close within 5 minutes after ESD or sensor activation. If you use a 5-minute resettable timer, you may continue to reset the time for closure up to a maximum of 20 minutes total.		Close within 20 minutes after ESD or sensor activation.	Close within 20 minutes after ESD or sensor activation. If you use a 20-minute resettable timer, you may continue to reset the time for closure up to a maximum of 60 minutes total.	Initiate unrestricted bleed within 60 minutes after ESD or sensor activation. If you use a 60-minute resettable timer you must initiate unrestricted bleed within 24 hours.	Initiate unrestricted bleed within 60 minutes after ESD or sensor activation. If you use a 60-minute resettable timer you must initiate unrestricted bleed within 24 hours.
(4) Subsea ESD (Platform) or BSDV TSE.	Close within 45 seconds after ESD or sensor activation.	Close one or more valves within 2 minutes and 45 seconds after ESD or sensor activation. Close all tree valves within 10 minutes after ESD or sensor activation.			Close within 10 minutes after ESD or sensor activation.	Initiate unrestricted bleed within 60 minutes after ESD or sensor activation.	Initiate unrestricted bleed within 60 minutes after ESD or sensor activation.
(5) Dropped object—(Subsea ESD MODU).	[no requirements].	Initiate valve closure immediately. You may allow for closure of the tree valves immediately prior to closure of the surface-controlled SSSV if desired.				Initiate unrestricted bleed immediately.	Initiate unrestricted bleed within 10 minutes after ESD activation.

(c) If you have an electro-hydraulic control system and experience a loss of communications (EH Loss of Comms), you must comply with the following:

(1) If you can meet the EH Loss of Comms valve closure timing conditions specified in the table in this section, you must notify the appropriate BSEE District Office within 12 hours of detecting the loss of communication.

(2) If you cannot meet the EH Loss of Comms valve closure timing conditions specified in the table in this section, you must notify the appropriate BSEE District Office immediately after detecting the loss of communication. You must shut-in production by initiating a bleed of the low pressure (LP) hydraulic system or the high pressure (HP) hydraulic system within 120 minutes after loss of communication. Bleed the other hydraulic system within 180 minutes after loss of communication.

(3) You must obtain prior approval from the appropriate BSEE District Manager if you want to continue to produce after loss of communication when you cannot meet the EH Loss of Comms valve closure times specified in the table in paragraph (d) of this section. In your request, include an alternate valve closure table that your system is able to achieve. The appropriate BSEE District Manager may also approve an alternate hydraulic bleed schedule to allow for hydrate mitigation and orderly shut-in.

(d) If you experience a loss of communications, you must comply with the maximum allowable valve closure times and hydraulic system bleeding requirements listed in the following table or your approved DWOP:

VALVE CLOSURE TIMING, ELECTRO-HYDRAULIC CONTROL SYSTEM WITH LOSS OF COMMUNICATION

If you have the following . . .	Your pipeline BSDV must . . .	Your USV1 must . . .	Your USV2 must . . .	Your alternate isolation valve must . . .	Your surface-controlled SSSV must . . .	Your LP hydraulic system must . . .	Your HP hydraulic system must . . .
(1) Process upset.	Close within 45 seconds after sensor activation.	[no requirements]			[no requirements] ...	[no requirements] ...	[no requirements].

VALVE CLOSURE TIMING, ELECTRO-HYDRAULIC CONTROL SYSTEM WITH LOSS OF COMMUNICATION—Continued

If you have the following . . .	Your pipeline BSDV must . . .	Your USV1 must . . .	Your USV2 must . . .	Your alternate isolation valve must . . .	Your surface-controlled SSSV must . . .	Your LP hydraulic system must . . .	Your HP hydraulic system must . . .
(2) Pipeline PSHL.	Close within 45 seconds after sensor activation.	Initiate closure when LP hydraulic system is bled (close valves within 5 minutes after sensor activation).			Initiate closure when HP hydraulic system is bled (close within 24 hours after sensor activation).	Initiate unrestricted bleed immediately, concurrent with sensor activation.	Initiate unrestricted bleed within 24 hours after sensor activation.
(3) ESD/TSE (Platform).	Close within 45 seconds after ESD or sensor activation.	Initiate closure when LP hydraulic system is bled (close valves within 20 minutes after ESD or sensor activation).			Initiate closure when HP hydraulic system is bled (close within 60 minutes after ESD or sensor activation).	Initiate unrestricted bleed concurrent with BSDV closure (bleed within 20 minutes after ESD or sensor activation).	Initiate unrestricted bleed within 60 minutes after ESD or sensor activation.
(4) Subsea ESD (Platform) or BSDV TSE.	Close within 45 seconds after ESD or sensor activation.	Initiate closure when LP hydraulic system is bled (close valves within 5 minutes after ESD or sensor activation).			Initiate closure when HP hydraulic system is bled (close within 20 minutes after ESD or sensor activation).	Initiate unrestricted bleed immediately.	Initiate unrestricted bleed immediately, allowing for surface-controlled SSSV closure within 20 minutes.
(5) Dropped object—subsea ESD (MODU).	[no requirements].	Initiate closure immediately. You may allow for closure of the tree valves immediately prior to closure of the surface-controlled SSSV if desired.				Initiate unrestricted bleed immediately.	Initiate unrestricted bleed immediately

§ 250.839 What are the maximum allowable valve closure times and hydraulic bleeding requirements for direct-hydraulic control system?

(a) If you have direct-hydraulic control system you must:

(1) Design the subsea control system to meet the valve closure times listed in this section or your approved DWOP; and

(2) Verify the valve closure times upon installation. The BSEE District Manager may require you to verify the closure time of the USV(s) through visual authentication by diver or ROV.

(b) You must comply with the maximum allowable valve closure times and hydraulic system bleeding requirements listed in the following table or your approved DWOP:

VALVE CLOSURE TIMING, DIRECT-HYDRAULIC CONTROL SYSTEM

If you have the following . . .	Your pipeline BSDV must . . .	Your USV1 must . . .	Your USV2 must . . .	Your alternate isolation valve must . . .	Your surface-controlled SSSV must . . .	Your LP hydraulic system must . . .	Your HP hydraulic system must . . .
(1) Process upset.	Close within 45 seconds after sensor activation.	[no requirements]			[no requirements] ...	[no requirements] ...	[no requirements].
(2) Flowline PSHL.	Close within 45 seconds after sensor activation.	Close one or more valves within 2 minutes and 45 seconds after sensor activation. Close the designated USV1 within 20 minutes after sensor activation.			Close within 24 hours after sensor activation.	Complete bleed of USV1, USV2 and the AIV within 20 minutes after sensor activation.	Complete bleed within 24 hours after sensor activation.
(3) ESD/TSE (Platform).	Close within 45 seconds after ESD or sensor activation.	Close all valves within 20 minutes after ESD or sensor activation.			Close within 60 minutes after ESD or sensor activation.	Complete bleed of USV1, USV2 and the AIV within 20 minutes after ESD or sensor activation.	Complete bleed within 60 minutes after ESD or sensor activation.
(4) Subsea ESD (Platform) or BSDV TSE.	Close within 45 seconds after ESD or sensor activation.	Close one or more valves within 2 minutes and 45 seconds after ESD or sensor activation. Close all tree valves within 10 minutes after ESD or sensor activation.			Close within 10 minutes after ESD or sensor activation.	Complete bleed of USV1, USV2, and the AIV within 10 minutes after ESD or sensor activation.	Complete bleed within 10 minutes after ESD or sensor activation.
(5) Dropped object—Subsea ESD. (MODU)	[no requirements].	Initiate closure immediately. If desired, you may allow for closure of the tree valves immediately prior to closure of the surface-controlled SSSV.				Initiate unrestricted bleed immediately.	Initiate unrestricted bleed immediately.

Production Safety Systems

§ 250.840 Design, installation, and maintenance—general.

You must design, install, and maintain all production facilities and equipment including, but not limited to, separators, treaters, pumps, heat exchangers, fired components, wellhead injection lines, compressors, headers, and flowlines in a manner that is efficient, safe, and protects the environment.

§ 250.841 Platforms.

(a) You must protect all platform production facilities with a basic and ancillary surface safety system designed, analyzed, installed, tested, and maintained in operating condition in accordance with the provisions of API RP 14C, Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms (incorporated by reference as specified in § 250.198). If you use processing components other than those for which Safety Analysis Checklists are included in API RP 14C, you must utilize the analysis technique and documentation specified in API RP 14C to determine the effects and requirements of these components on the safety system. Safety device requirements for pipelines are contained in 30 CFR 250.1004.

(b) You must design, analyze, install, test, and maintain in operating condition all platform production process piping in accordance with API RP 14E, Design and Installation of Offshore Production Platform Piping Systems and API 570, Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems (both incorporated by reference as specified in § 250.198). The District Manager may approve temporary repairs to facility piping on a case-by-case basis for a period not to exceed 30 days.

§ 250.842 Approval of safety systems design and installation features.

(a) Before you install or modify a production safety system, you must submit a production safety system application to the District Manager for approval. The application must include the information prescribed in the following table:

You must submit:	Details and/or additional requirements:
(1) A schematic piping and instrumentation diagram . . .	Showing the following: (i) Well shut-in tubing pressure; (ii) Piping specification breaks, piping sizes; (iii) Pressure relief valve set points; (iv) Size, capacity, and design working pressures of separators, flare scrubbers, heat exchangers, treaters, storage tanks, compressors and metering devices; (v) Size, capacity, design working pressures, and maximum discharge pressure of hydrocarbon-handling pumps; (vi) size, capacity, and design working pressures of hydrocarbon-handling vessels, and chemical injection systems handling a material having a flash point below 100 degrees Fahrenheit for a Class I flammable liquid as described in API RP 500 and 505 (both incorporated by reference as specified in § 250.198). (vii) Size and maximum allowable working pressures as determined in accordance with API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems (incorporated by reference as specified in § 250.198).
(2) A safety analysis flow diagram (API RP 14C, Appendix E) and the related Safety Analysis Function Evaluation (SAFE) chart (API RP 14C, subsection 4.3.3) (incorporated by reference as specified in § 250.198)	If processing components are used, other than those for which Safety Analysis Checklists are included in API RP 14C, you must use the same analysis technique and documentation to determine the effects and requirements of these components upon the safety system.
(3) Electrical system information, including	(i) A plan for each platform deck and outlining all classified areas. You must classify areas according to API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2; or API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1, and Zone 2 (both incorporated by reference as specified in § 250.198). (ii) Identification of all areas where potential ignition sources, including non-electrical ignition sources, are to be installed showing: (A) All major production equipment, wells, and other significant hydrocarbon sources, and a description of the type of decking, ceiling, and walls (*e.g.*, grating or solid) and firewalls and; (B) the location of generators, control rooms, panel boards, major cabling/conduit routes, and identification of the primary wiring method (*e.g.*, type cable, conduit, wire) and; (iii) one-line electrical drawings of all electrical systems including the safety shutdown system. You must also include a functional legend.
(4) Schematics of the fire and gas-detection systems	Showing a functional block diagram of the detection system, including the electrical power supply and also including the type, location, and number of detection sensors; the type and kind of alarms, including emergency equipment to be activated; the method used for detection; and the method and frequency of calibration.
(5) The service fee listed in § 250.125	The fee you must pay will be determined by the number of components involved in the review and approval process.

(b) The production safety system application must also include the following certifications:

(1) That all electrical installations were designed according to API RP 14F, Design, Installation, and Maintenance of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Division 1 and Division 2 Locations, or API RP 14FZ, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1 and Zone 2 Locations, as applicable (incorporated by reference as specified in § 250.198);

(2) That the designs for the mechanical and electrical systems were reviewed, approved, and stamped by a registered professional engineer(s). The registered professional engineer must be registered in a State or Territory in the United States and have sufficient expertise and experience to perform the duties; and

(3) That a hazard analysis was performed during the design process in accordance with API RP 14J (incorporated by reference as specified in § 250.198), and that you have a hazards analysis program in place to assess potential hazards during the operation of the platform:

(c) Before you begin production, you must certify, in a letter to the District Manager, that the mechanical and electrical systems were installed in accordance with the approved designs.

(d) Within 60 days after production, you must certify, in a letter to the District Manager, that the as-built diagrams outlined in (a)(1) and (2) of this section and the piping and instrumentation diagrams are on file and have been certified correct and stamped by a registered professional engineer(s). The registered professional engineer must be registered in a State or Territory in the United States and have sufficient expertise and experience to perform the duties.

(e) All as-built diagrams outlined in (a)(1) and (2) of this section must be submitted to the District Manager within 60 days after production.

(f) You must maintain information concerning the approved design and installation features of the production safety system at your offshore field office nearest the OCS facility or at other locations conveniently available to the District Manager. As-built piping and instrumentation diagrams must be maintained at a secure onshore location and readily available offshore. These documents must be made available to BSEE upon request and be retained for the life of the facility. All approvals are subject to field verifications.

§§ 250.843—250.849 [Reserved]

Additional Production System Requirements

§ 250.850 Production system requirements—general.

You must comply with the production safety system requirements in the following sections (§§ 250.851 through 250.872), some of which are in addition to those contained in API RP 14C (incorporated by reference as specified in § 250.198).

§ 250.851 Pressure vessels (including heat exchangers) and fired vessels.

(a) Pressure vessels (including heat exchangers) and fired vessels must meet the requirements in the following table:

Item name	Applicable codes and requirements
(1) Pressure and fired vessels where the operating pressure is or will be 15 pounds per square inch gauge (psig) or greater.	(i) Must be designed, fabricated, and code stamped according to applicable provisions of sections I, IV, and VIII of the ANSI/ASME Boiler and Pressure Vessel Code. (ii) Must be repaired, maintained, and inspected in accordance with API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, Downstream Segment (incorporated by reference as specified in § 250.198).
(2) Pressure and fired vessels (such as flare and vent scrubbers) where the operating pressure is or will be at least 5 psig and less than 15 psig.	Must employ a safety analysis checklist in the design of each component. These vessels do not need to be ASME Code stamped as pressure vessels.
(3) Pressure and fired vessels where the operating pressure is or will be less than 5 psig.	Are not subject to the requirements of paragraphs (a)(1) and (a)(2).
(4) Existing uncoded Pressure and fired vessels (i) in use on the effective date of the final rule; (ii) with an operating pressure of 5 psig or greater; and (iii) that are not code stamped in accordance with the ANSI/ASME Boiler and Pressure Vessel Code . . .	Must be justified and approval obtained from the District Manager for their continued use beyond 18 months from the effective date of the final rule.
(5) Pressure relief valves	(i) Must be designed and installed according to applicable provisions of sections I, IV, and VIII of the ASME Boiler and Pressure Vessel Code. (ii) Must conform to the valve sizing and pressure-relieving requirements specified in these documents, but (except for completely redundant relief valves), must be set no higher than the maximum-allowable working pressure of the vessel. (iii) And vents must be positioned in such a way as to prevent fluid from striking personnel or ignition sources.
(6) Steam generators operating at less than 15 psig	Must be equipped with a level safety low (LSL) sensor which will shut off the fuel supply when the water level drops below the minimum safe level.
(7) Steam generators operating at 15 psig or greater	(i) Must be equipped with a level safety low (LSL) sensor which will shut off the fuel supply when the water level drops below the minimum safe level. (ii) You must also install a water-feeding device that will automatically control the water level except when closed loop systems are used for steam generation.

(b) *Operating pressure ranges.* You must use pressure recording devices to establish the new operating pressure ranges of pressure vessels at any time the normalized system pressure changes by 5 percent. You must maintain the pressure recording information you used to determine current operating pressure ranges at your field office nearest the OCS facility or at another location conveniently available to the District Manager for as long as the information is valid.

(c) Pressure shut-in sensors must be set according to the following table:

Type of sensor	Settings	Additional requirements
(1) High pressure shut-in sensor.	Must be no higher than 15 percent or 5 psi (whichever is greater) above the highest operating pressure of the vessel.	Must also be set sufficiently below (5 percent or 5 psi, whichever is greater) the relief valve's set pressure to assure that the pressure source is shut-in before the relief valve activates.
(2) Low pressure shut-in sensor.	Must be set no lower than 15 percent or 5 psi (whichever is greater) below the lowest pressure in the operating range.	You must receive specific approval from the District Manager for activation limits on pressure vessels that have a pressure safety low (PSL) sensor set less than 5 psi.

§ 250.852 Flowlines/Headers.

(a)(1) You must equip flowlines from wells with both PSH and PSL sensors. You must locate these sensors in accordance with section A.1 of API RP 14C (incorporated by reference as specified in § 250.198).

(2) You must use pressure recording devices to establish the new operating pressure ranges of flowlines at any time when the normalized system pressure changes by 50 psig or 5 percent, whichever is higher.

(3) You must maintain the most recent pressure recording information you used to determine operating pressure ranges at your field office nearest the OCS facility or at another location conveniently available to the District Manager for as long as the information is valid.

(b) Flowline shut-in sensors must meet the requirements in the following table:

Type of flowline sensor	Settings
(1) PSH sensor	Must be set no higher than 15 percent or 5 psi (whichever is greater) above the highest operating pressure of the flowline. In all cases, the PSH must be set sufficiently below the maximum shut-in wellhead pressure or the gas-lift supply pressure to assure actuation of the SSV. Do not set the PSH sensor above the maximum allowable working pressure of the flowline.
(2) PSL sensor	Must be set no lower than 15 percent or 5 psi (whichever is greater) below the lowest operating pressure of the flowline in which it is installed.

(c) If a well flows directly to a pipeline before separation, the flowline and valves from the well located upstream of and including the header inlet valve(s) must have a working pressure equal to or greater than the maximum shut-in pressure of the well unless the flowline is protected by one of the following:

(1) A relief valve which vents into the platform flare scrubber or some other location approved by the District Manager. You must design the platform flare scrubber to handle, without liquid-hydrocarbon carryover to the flare, the maximum-anticipated flow of liquid hydrocarbons that may be relieved to the vessel; or

(2) Two SSVs with independent PSH sensors connected to separate relays and sensing points and installed with adequate volume upstream of any block valve to allow sufficient time for the SSVs to close before exceeding the maximum allowable working pressure. Each independent PSH sensor must close both SSVs along with any associated flowline PSL sensor. If the maximum shut-in pressure of a dry tree satellite well(s) is greater than 1½ times the maximum allowable pressure of pipeline, a pressure safety valve (PSV) of sufficient size and relief capacity to protect against any SSV leakage or fluid hammer effect may be required by the District Manager. The PSV must be installed upstream of the host platform boarding valve and vent into the platform flare scrubber or some other location approved by the District Manager.

(d) If a well flows directly to the pipeline from a header without prior separation, the header, the header inlet valves, and pipeline isolation valve must have a working pressure equal to or greater than the maximum shut-in pressure of the well unless the header is protected by the safety devices as outlined in paragraph (c) of this section.

(e) If you are installing flowlines constructed of unbonded flexible pipe on a floating platform, you must:

(1) Review the manufacturer's Design Methodology Verification Report and the independent verification agent's (IVA's) certificate for the design methodology contained in that report to ensure that the manufacturer has complied with the requirements of API Spec. 17J, Specification for Unbonded Flexible Pipe (ISO 13628–2:2006) (incorporated by reference as specified in § 250.198);

(2) Determine that the unbonded flexible pipe is suitable for its intended purpose;

(3) Submit to the District Manager the manufacturer's design specifications for the unbonded flexible pipe; and

(4) Submit to the District Manager a statement certifying that the pipe is suitable for its intended use and that the manufacturer has complied with the IVA requirements of API Spec. 17J (ISO 13628–2:2006) (incorporated by reference as specified in § 250.198).

(f) Automatic pressure or flow regulating choking devices must not prevent the normal functionality of the process safety system that includes, but is not limited to, the flowline pressure safety devices and the SSV.

(g) You may install a single flow safety valve (FSV) on the platform to protect multiple subsea pipelines or wells that tie into a single pipeline riser provided that you install an FSV for each riser and test it in accordance with the criteria prescribed in § 250.880(c)(2)(v).

(h) You may install a single PSHL sensor on the platform to protect multiple subsea pipelines that tie into a single pipeline riser provided that you install a PSHL sensor for each riser and locate it upstream of the BSDV.

§ 250.853 Safety sensors.

You must ensure that:

(a) All shutdown devices, valves, and pressure sensors function in a manual reset mode;

(b) Sensors with integral automatic reset are equipped with an appropriate device to override the automatic reset mode;

(c) All pressure sensors are equipped to permit testing with an external pressure source; and,

(d) All level sensors are equipped to permit testing through an external bridle on all new vessel installations.

§ 250.854 Floating production units equipped with turrets and turret mounted systems.

(a) For floating production units equipped with an auto slew system, you must integrate the auto slew control system with your process safety system allowing for automatic shut-in of the production process, including the sources (subsea wells, subsea pumps, *etc.*) and releasing of the buoy. Your safety system must immediately initiate a process system shut-in according to §§ 250.838 and 250.839 and release the buoy to prevent hydrocarbon discharge and damage to the subsea infrastructure when the following are encountered:

(i) Your buoy is clamped,

(ii) Your auto slew mode is activated, and

(iii) You encounter a ship heading/position failure or an exceedance of the rotational tolerances of the clamped buoy.

(b) For floating production units equipped with swivel stack arrangements, you must equip the portion of the swivel stack containing hydrocarbons with a leak detection system. Your leak detection system must be tied into your production process surface safety system allowing for automatic shut-in of the system. Upon seal system failure and detection of a hydrocarbon leak, your surface safety system must immediately initiate a process system shut-in according to §§ 250.838 and 250.839.

§ 250.855 Emergency shutdown (ESD) system.

The ESD system must conform to the requirements of Appendix C, section C1, of API RP 14C (incorporated by reference as specified in § 250.198), and the following:

(a) The manually operated ESD valve(s) must be quick-opening and nonrestricted to enable the rapid actuation of the shutdown system. Only ESD stations at the boat landing may utilize a loop of breakable synthetic tubing in lieu of a valve. This breakable loop is not required to be physically located on the boat landing, but must be accessible from a boat.

(b) You must maintain a schematic of the ESD that indicates the control functions of all safety devices for the platforms on the platform, at your field office nearest the OCS facility, or at another location conveniently available to the District Manager for the life of the facility.

§ 250.856 Engines.

(a) *Engine exhaust.* You must equip all engine exhausts to comply with the insulation and personnel protection requirements of API RP 14C, section 4.2., (incorporated by reference as specified in § 250.198). You must equip exhaust piping from diesel engines with spark arresters.

(b) *Diesel engine air intake.* You must equip diesel engine air intakes with a device to shutdown the diesel engine in the event of runaway. You must equip diesel engines that are continuously attended with either remotely operated manual or automatic shutdown devices. You must equip diesel engines that are not continuously attended with automatic shutdown devices. The following diesel engines do not require a shutdown device: Engines for fire water pumps; engines on emergency generators; engines that power BOP accumulator systems; engines that power air supply for confined entry personnel; temporary equipment on non-producing platforms; booster engines whose purpose is to start larger engines; and engines that power portable single cylinder rig washers.

§ 250.857 Glycol dehydration units.

(a) You must install a pressure relief system or an adequate vent on the glycol regenerator (reboiler) to prevent overpressurization. The discharge of the relief valve must be vented in a nonhazardous manner.

(b) You must install the FSV on the dry glycol inlet to the glycol contact tower as near as practical to the glycol contact tower.

(c) You must install the shutdown valve (SDV) on the wet glycol outlet from the glycol contact tower as near as practical to the glycol contact tower.

250.858 Gas compressors.

(a) You must equip compressor installations with the following protective equipment as required in API RP 14C, sections A4 and A8 (incorporated by reference as specified in § 250.198).

(1) A pressure safety high (PSH) sensor, a pressure safety low (PSL) sensor, a pressure safety valve (PSV), and a level safety high (LSH) sensor, and a level safety low (LSL) sensor to protect each interstage and suction scrubber.

(2) A temperature safety high (TSH) sensor on each compressor discharge cylinder.

(3) You must design the PSH and PSL sensors and LSH controls protecting compressor suction and interstage scrubbers to actuate automatic SDVs located in each compressor suction and fuel gas line so that the compressor unit and the associated vessels can be isolated from all input sources. All automatic SDVs installed in compressor suction and fuel gas piping must also be actuated by the shutdown of the prime mover. Unless otherwise approved by the District Manager, gas-well gas affected by the closure of the automatic SDV on a compressor suction must be diverted to the pipeline or shut-in at the wellhead.

(4) You must install a blowdown valve on the discharge line of all compressor installations that are 1,000 horsepower (746 kilowatts) or greater.

(b) You must use pressure recording devices to establish the new operating pressure ranges for compressor discharge sensors at any time when the normalized system pressure changes by 50 psig or 5 percent, whichever is higher. You must:

(1) Maintain the most recent pressure recording information that you used to determine operating pressure ranges at your field office nearest the OCS facility or at another location conveniently available to the District Manager.

(2) Set the PSH sensor(s) no higher than 15 percent or 5 psi, whichever is greater, above the highest operating pressure of the discharge line and sufficiently below the maximum discharge pressure to ensure actuation of the suction SDV. Set the PSH sensor(s) sufficiently below (5 percent or 5 psi, whichever is greater) the set pressure of the PSV to assure that the pressure source is shut-in before the PSV activates.

(3) Set PSL sensor(s) no lower than 15 percent or 5 psi, whichever is greater, below the lowest operating pressure of the discharge line in which it is installed.

(c) For vapor recovery units, when the suction side of the compressor is operating below 5 psig and the system is capable of being vented to atmosphere, you are not required to install PSH and PSL sensors on the suction side of the compressor.

§ 250.859 Firefighting systems.

(a) Firefighting systems for both open and totally enclosed platforms installed for extreme weather conditions or other reasons must conform to API RP 14G, Recommended Practice for Fire Prevention and Control on Fixed Open-type Offshore Production Platforms (incorporated by reference as specified in § 250.198), and require approval of the District Manager. The following additional requirements apply for both open- and closed-production platforms:

(1) You must install a firewater system consisting of rigid pipe with firehose stations fixed firewater monitors. The firewater system must protect in all areas where production-handling equipment is located. You

must install a fixed water spray system in enclosed well-bay areas where hydrocarbon vapors may accumulate.

(2) Fuel or power for firewater pump drivers must be available for at least 30 minutes of run time during a platform shut-in. If necessary, you must install an alternate fuel or power supply to provide for this pump operating time unless the District Manager has approved an alternate firefighting system. As of 1 year after the publication date of the final rule, you must have equipped all new firewater pump drivers with automatic starting capabilities upon activation of the ESD, fusible loop, or other fire detection system. For electric driven firewater pump drivers, in the event of a loss of primary power, you must install an automatic transfer switch to cross over to an emergency power source in order to maintain at least 30 minutes of run time. The emergency power source must be reliable and have adequate capacity to carry the locked-rotor currents of the fire pump motor and accessory equipment. You must route power cables or conduits with wires installed between the fire water pump drivers and the automatic transfer switch away from hazardous-classified locations that can cause flame impingement, Power cables or conduits with wires that connect to the fire water pump drivers must be capable of maintaining circuit integrity for not less than 30 minutes of flame impingement.

(3) You must post a diagram of the firefighting system showing the location of all firefighting equipment in a prominent place on the facility or structure.

(4) For operations in subfreezing climates, you must furnish evidence to the District Manager that the firefighting system is suitable for those conditions.

(5) All firefighting equipment located on a facility must be in good working order whether approved as the primary, secondary, or ancillary firefighting system.

(b) *Inoperable Firewater Systems.* If you are required to maintain a firewater system and it becomes inoperable, either shut-in your production operations while making the necessary repairs, or request that the appropriate BSEE District Manager grant you a departure under § 250.142 to use a firefighting system using chemicals on a temporary basis (for a period up to 7 days) while you make the necessary repairs. If you are unable to complete repairs during the approved time period because of circumstances beyond your control, the BSEE District Manager may grant extensions to your approved departure for periods up to 7 days.

§ 250.860 Chemical firefighting system.

(a) *Major platforms and minor manned platforms.* A firefighting system using chemicals-only may be used in lieu of a water-based system on a major platform or a minor manned platform if the District Manager determines that the use of a chemical system provides equivalent fire-protection control and would not increase the risk to human safety. A major platform is a structure with either six or more completions or zero to five completions with more than one item of production process equipment. A minor platform is a structure with zero to five completions with one item of production process equipment. A manned platform is one that is attended 24 hours a day or one on which personnel are quartered overnight. To obtain approval to use a chemical-only fire prevention and control system on a major platform or a minor manned platform, in lieu of a water system, you must submit to the District Manager:

(1) A justification for asserting that the use of a chemical system provides equivalent fire-protection control. The justification must address fire prevention, fire protection, fire control, and firefighting on the platform; and

(2) A risk assessment demonstrating that a chemical-only system would not increase the risk to human safety. Provide the following and any other important information in your risk assessment:

For the use of a chemical firefighting system on major and minor manned platforms, you must provide the following in your risk assessment . . .	Including . . .
(i) Platform description	(A) The type and quantity of hydrocarbons (*i.e.,* natural gas, oil) that are produced, handled, stored, or processed at the facility.
	(B) The capacity of any tanks on the facility that you use to store either liquid hydrocarbons or other flammable liquids.
	(C) The total volume of flammable liquids (other than produced hydrocarbons) stored on the facility in containers other than bulk storage tanks. Include flammable liquids stored in paint lockers, storerooms, and drums.
	(D) If the facility is manned, provide the maximum number of personnel on board and the anticipated length of their stay.
	(E) If the facility is unmanned, provide the number of days per week the facility will be visited, the average length of time spent on the facility per day, the mode of transportation, and whether or not transportation will be available at the facility while personnel are on board.
	(F) A diagram that depicts: Quarters location, production equipment location, fire prevention and control equipment location, lifesaving appliances and equipment location, and evacuation plan escape routes from quarters and all manned working spaces to primary evacuation equipment.
(ii) Hazard assessment (facility specific).	(A) Identification of all likely fire initiation scenarios (including those resulting from maintenance and repair activities). For each scenario, discuss its potential severity and identify the ignition and fuel sources.
	(B) Estimates of the fire/radiant heat exposure that personnel could be subjected to. Show how you have considered designated muster areas and evacuation routes near fuel sources and have verified proper flare boom sizing for radiant heat exposure.
(iii) Human factors assessment (not facility specific).	(A) Descriptions of the fire-related training your employees and contractors have received. Include details on the length of training, whether the training was hands-on or classroom, the training frequency, and the topics covered during the training.
	(B) Descriptions of the training your employees and contractors have received in fire prevention, control of ignition sources, and control of fuel sources when the facility is occupied.
	(C) Descriptions of the instructions and procedures you have given to your employees and contractors on the actions they should take if a fire occurs. Include those instructions and procedures specific to evacuation. State how you convey this information to your employees and contractor on the platform.

For the use of a chemical firefighting system on major and minor manned platforms, you must provide the following in your risk assessment . . .	Including . . .
(iv) Evacuation assessment (facility specific).	(A) A general discussion of your evacuation plan. Identify your muster areas (if applicable), both the primary and secondary evacuation routes, and the means of evacuation for both. (B) Description of the type, quantity, and location of lifesaving appliances available on the facility. Show how you have ensured that lifesaving appliances are located in the near vicinity of the escape routes. (C) Description of the types and availability of support vessels, whether the support vessels are equipped with a fire monitor, and the time needed for support vessels to arrive at the facility. (D) Estimates of the worst case time needed for personnel to evacuate the facility should a fire occur.
(v) Alternative protection assessment.	(A) Discussion of the reasons you are proposing to use an alternative fire prevention and control system. (B) Lists of the specific standards used to design the system, locate the equipment, and operate the equipment/system. (C) Description of the proposed alternative fire prevention and control system/equipment. Provide details on the type, size, number, and location of the prevention and control equipment. (D) Description of the testing, inspection, and maintenance program you will use to maintain the fire prevention and control equipment in an operable condition. Provide specifics regarding the type of inspection, the personnel who conduct the inspections, the inspection procedures, and documentation and recordkeeping.
(vi) Conclusion	A summary of your technical evaluation showing that the alternative system provides an equivalent level of personnel protection for the specific hazards located on the facility.

(b) *Changes after approval.* If BSEE has approved your request to use a chemical-only fire suppressant system in lieu of a water system, and if you make an insignificant change to your platform subsequent to that approval, document the change and maintain the documentation at the facility or nearest field office for BSEE review and/or inspection and maintain for the life of the facility. Do not submit this documentation to the BSEE District Manager. However, if you make a significant change to your platform (*e.g.*, placing a storage vessel with a capacity of 100 barrels or more on the facility, adding production equipment) or if you plan to man an unmanned platform temporarily, submit a new request, including an updated risk assessment, to the appropriate BSEE District Manager for approval. You must maintain the most recent documentation that you submitted to BSEE for the life of the facility at either location discussed previously.

(c) *Minor unmanned platforms.* You may use a U.S. Coast Guard type and size rating "B–II" portable dry chemical unit (with a minimum UL Rating (US) of 60–B:C) or a 30-pound portable dry chemical unit, in lieu of a water system, on all platforms that are both minor and unmanned, as long as you ensure that the unit is available on the platform when personnel are on board.

§ 250.861 Foam firefighting system.

When foam firefighting systems are installed as part of your firefighting system, you must:

(a) Annually conduct an inspection of the foam concentrates and their tanks or storage containers for evidence of excessive sludging or deterioration.

(b) Annually send samples of the foam concentrate to the manufacturer or authorized representative for quality condition testing. You must have the sample tested to determine the specific gravity, pH, percentage of water dilution, and solid content. Based on these results, the foam must be certified by an authorized representative of the manufacturer as suitable firefighting foam per the original manufacturer's specifications. The certification document must be readily accessible for field inspection. In lieu of sampling and certification, you may choose to replace the total inventory of foam with suitable new stock.

(c) The quantity of concentrate must meet design requirements, and tanks or containers must be kept full with space allowed for expansion.

§ 250.862 Fire and gas-detection systems.

(a) You must install fire (flame, heat, or smoke) sensors in all enclosed classified areas. You must install gas sensors in all inadequately ventilated, enclosed classified areas. Adequate ventilation is defined as ventilation that is sufficient to prevent accumulation of significant quantities of vapor-air mixture in concentrations over 25 percent of the lower explosive limit. An acceptable method of providing adequate ventilation is one that provides a change of air volume each 5 minutes or 1 cubic foot of air-volume flow per minute per square foot of solid floor area, whichever is greater. Enclosed areas (*e.g.*, buildings, living quarters, or doghouses) are defined as those areas confined on more than four of their six possible sides by walls, floors, or ceilings more restrictive to air flow than grating or fixed open louvers and of sufficient size to allow entry of personnel. A classified area is any area classified Class I, Group D, Division 1 or 2, following the guidelines of API RP 500 (incorporated by reference as specified in § 250.198), or any area classified Class I, Zone 0, Zone 1, or Zone 2, following the guidelines of API RP 505 (incorporated by reference as specified in § 250.198).

(b) All detection systems must be capable of continuous monitoring. Fire-detection systems and portions of combustible gas-detection systems related to the higher gas concentration levels must be of the manual-reset type. Combustible gas-detection systems related to the lower gas-concentration level may be of the automatic-reset type.

(c) A fuel-gas odorant or an automatic gas-detection and alarm system is required in enclosed, continuously manned areas of the facility which are provided with fuel gas. Living quarters and doghouses not containing a gas source and not located in a classified area do not require a gas detection system.

(d) The District Manager may require the installation and maintenance of a gas detector or alarm in any potentially hazardous area.

(e) Fire- and gas-detection systems must be an approved type, and designed and installed in accordance with API RP 14C, API RP 14G, API RP 14F, API RP 14FZ, API RP 500, and API RP 505 (all incorporated by reference as specified in § 250.198).

§ 250.863 Electrical equipment.

You must design, install, and maintain electrical equipment and systems in accordance with the requirements in § 250.114.

§ 250.864 Erosion.

You must have a program of erosion control in effect for wells or fields that have a history of sand production. The erosion-control program may include sand probes, X-ray, ultrasonic, or other satisfactory monitoring methods. You must maintain records by lease that indicate the wells that have erosion-control programs in effect. You must also maintain the results of the programs for at least 2 years and make them available to BSEE upon request.

§ 250.865 Surface pumps.

(a) You must equip pump installations with the protective equipment required in API RP 14C, Appendix A—A.7, Pumps section A7 (incorporated by reference as specified in § 250.198).

(b) You must use pressure recording devices to establish the new operating pressure ranges for pump discharge sensors at any time when the normalized system pressure changes by 50 psig or 5 percent, whichever is higher. You must only maintain the most recent pressure recording information that you used to determine operating pressure ranges at your field office nearest the OCS facility or at another location conveniently available to the District Manager. The PSH sensor(s) must be set no higher than 15 percent or 5 psi, whichever is greater, above the highest operating pressure of the discharge line. But in all cases, you must set the PSH sensor sufficiently below the maximum allowable working pressure of the discharge piping. In addition, you must set the PSH sensor(s) at least (5 percent or 5 psi, whichever is greater) below the set pressure of the PSV to assure that the pressure source is shut-in before the PSV activates. You must set the PSL sensor(s) no lower than 15 percent or 5 psi, whichever is greater, below the lowest operating pressure of the discharge line in which it is installed.

(c) The PSL does not need to be placed into service until such time as the pump discharge pressure has risen above the PSL sensing point, as long as this time does not exceed 45 seconds.

(d) You may exclude the PSH and PSL sensors on small, low-volume pumps such as chemical injection-type pumps. This is acceptable if such a pump is used as a sump pump or transfer pump, has a discharge rating of less than ½ gallon per minute (gpm), discharges into piping that is 1 inch or less in diameter, and terminates in piping that is 2 inches or larger in diameter.

(e) You must install a TSE in the immediate vicinity of all pumps in hydrocarbon service or those powered by platform fuel gas.

(f) The pump maximum discharge pressure must be determined using the maximum possible suction pressure and the maximum power output of the driver.

§ 250.866 Personnel safety equipment.

You must maintain all personnel safety equipment located on a facility, whether required or not, in good working condition.

§ 250.867 Temporary quarters and temporary equipment.

(a) The District Manager must approve all temporary quarters to be installed on OCS facilities. You must equip temporary quarters with all safety devices required by API RP 14C, Appendix C (incorporated by reference as specified in § 250.198).

(b) The District Manager may require you to install a temporary firewater system in temporary quarters.

(c) Temporary equipment used for well testing and/or well clean-up needs to be approved by the District Manager.

§ 250.868 Non-metallic piping.

You may use non-metallic piping, such as that made from polyvinyl chloride, chlorinated polyvinyl chloride, and reinforced fiberglass only in atmospheric, primarily non-hydrocarbon service such as:

(a) Piping in galleys and living quarters;

(b) Open atmospheric drain systems;

(c) Overboard water piping for atmospheric produced water systems; and

(d) Firewater system piping.

§ 250.869 General platform operations.

(a) Surface or subsurface safety devices must not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing. You may take only the minimum number of safety devices out of service. Personnel must monitor the bypassed or blocked-out functions until the safety devices are placed back in service. Any surface or subsurface safety device which is temporarily out of service must be flagged. A designated visual indicator must be used to identify the bypassed safety device. You must follow the monitoring procedures as follows:

(1) If you are using a non-computer-based system, meaning your safety system operates primarily with pneumatic supply or non-programmable electrical systems, you must monitor non-computer-based system bypassed safety devices by positioning monitoring personnel at either the control panel for the bypassed safety device, or at the bypassed safety device, or at the component that the bypassed safety device would be monitoring when in service. You must also ensure that monitoring personnel are able to view all relevant essential operating conditions until all bypassed safety devices are placed back in service and are able to initiate shut-in action in the event of an abnormal condition.

(2) If you are using a computer-based technology system, meaning a computer-controlled electronic safety system such as supervisory control and data acquisition and remote terminal units, you must monitor computer-based technology system bypassed safety devices by maintaining instantaneous communications at all times among remote monitoring personnel and the personnel performing maintenance, testing, or startup. Until all bypassed safety devices are placed back in service, you must also position monitoring personnel at a designated control station that is capable of the following:

(i) Displaying all relevant essential operating conditions that affect the bypassed safety device, well, pipeline, and process component. If electronic display of all relevant essential conditions is not possible, you must have field personnel monitoring the level gauges (Site glass) and pressure gauges in order to know the current operating conditions. You must be in communication with all field personnel monitoring the gauges;

(ii) Controlling the production process equipment and the entire safety system;

(iii) Displaying a visual indicator when safety devices are placed in the bypassed mode; and

(iv) Upon command, overriding the bypassed safety device and initiating shut-in action in the event of an abnormal condition.

(3) You must not bypass for startup any element of the emergency support system or other support system required by API RP 14C, Appendix C, (incorporated by reference as specified in § 250.198) without first receiving BSEE approval to depart from this operating procedure in accordance with 250.142. These systems include, but are not limited to:

(i) The ESD system to provide a method to manually initiate platform shutdown by personnel observing abnormal conditions or undesirable events. You do not have to receive

approval from the District Manager for manual reset and/or initial charging of the system;

(ii) The fire loop system to sense the heat of a fire and initiate platform shutdown, and other fire detection devices (flame, thermal, and smoke) that are used to enhance fire detection capability. You do not have to receive approval from the District Manager for manual reset and/or initial charging of the system;

(iii) The combustible gas detection system to sense the presence of hydrocarbons and initiate alarms and platform shutdown before gas concentrations reach the lower explosive limit;

(iv) The adequate ventilation system;

(v) The containment system to collect escaped liquid hydrocarbons and initiate platform shutdown;

(vi) Subsurface safety valves, including those that are self-actuated (subsurface-controlled SSSV) or those that are activated by an ESD system and/or a fire loop (surface-controlled SSSV). You do not have to receive approval from the District Manager for routine operations in accordance with 250.817;

(vii) The pneumatic supply system; and

(viii) The system for discharging gas to the atmosphere.

(4) In instances where components of the ESD, as listed above in paragraph (3), are bypassed for maintenance, precautions must be taken to provide the equivalent level of protection that existed prior to the bypass.

(b) When wells are disconnected from producing facilities and blind flanged, or equipped with a tubing plug, or the master valves have been locked closed, you are not required to comply with the provisions of API RP 14C (incorporated by reference as specified in § 250.198) or this regulation concerning the following:

(1) Automatic fail-close SSVs on wellhead assemblies, and

(2) The PSH and PSL sensors in flowlines from wells.

(c) When pressure or atmospheric vessels are isolated from production facilities (*e.g.*, inlet valve locked closed or inlet blind-flanged) and are to remain isolated for an extended period of time, safety device testing in accordance with API RP 14C (incorporated by reference as specified in § 250.198) or this subpart is not required, with the exception of the PSV, unless the vessel is open to the atmosphere.

(d) All open-ended lines connected to producing facilities and wells must be plugged or blind-flanged, except those lines designed to be open-ended such as flare or vent lines.

(e) All new production safety system installations, component process control devices, and component safety devices must not be installed utilizing the same sensing points.

§ 250.870 Time delays on pressure safety low (PSL) sensors.

(a) You must apply industry standard Class B, Class C, and Class B/C logic to all applicable PSL sensors installed on process equipment, as long as the time delay does not exceed 45 seconds. Use of a PSL sensor with a time delay greater than 45 seconds requires BSEE approval of a request under § 250.141. You must document on your field test records use of a PSL sensor with a time delay greater than 45 seconds. For purposes of this section, PSL sensors are categorized as follows:

(1) Class B safety devices have logic that allows for the PSL sensors to be bypassed for a fixed time period (typically less than 15 seconds, but not more than 45 seconds). Examples include sensors used in conjunction with the design of pump and compressor panels such as PSL sensors, lubricator no-flows, and high-water jacket temperature shutdowns.

(2) Class C safety devices have logic that allows for the PSL sensors to be bypassed until the component comes into full service (*i.e.*, the time at which the startup pressure equals or exceeds the set pressure of the PSL sensor, the system reaches a stabilized pressure, and the PSL sensor clears).

(3) Class B/C safety devices have logic that allows for the PSL sensors to incorporate a combination of Class B and Class C circuitry. These devices are used to ensure that the PSL sensors are not unnecessarily bypassed during startup and idle operations, *e.g.*, Class B/C bypass circuitry activates when a pump is shut down during normal operations. The PSL sensor remains bypassed until the pump's start circuitry is activated and either

(i) The Class B timer expires no later than 45 seconds from start activation or

(ii) The Class C bypass is initiated until the pump builds up pressure above the PSL sensor set point and the PSL sensor comes into full service.

(b) If you do not install time delay circuitry that bypasses activation of PSL sensor shutdown logic for a specified time period on process and product transport equipment during startup and idle operations, you must manually bypass (pin out or disengage) the PSL sensor, with a time delay not to exceed 45 seconds. Use of a manual bypass that involves a time delay greater than 45 seconds requires approval from the appropriate BSEE District Manager of a request made under § 250.141.

§ 250.871 Welding and burning practices and procedures.

All welding, burning, and hot-tapping activities must be conducted according to the specific requirements in § 250.113. The BSEE approval of variances from your approved welding and burning practices and procedures may be requested in accordance with 250.141 regarding use of alternative procedures or equipment.

§ 250.872 Atmospheric vessels.

(a) You must equip atmospheric vessels used to process and/or store liquid hydrocarbons or other Class I liquids as described in API RP 500 or 505 (both incorporated by reference as specified in § 250.198) with protective equipment identified in API RP 14C, section A.5 (incorporated by reference as specified in § 250.198).

(b) You must ensure that all atmospheric vessels are designed and maintained to ensure the proper working conditions for LSH sensors. The LSH sensor bridle must be designed to prevent different density fluids from impacting sensor functionality. For atmospheric vessels that have oil buckets, the LSH sensor must be installed to sense the level in the oil bucket.

(c) You must ensure that all flame arrestors are maintained to ensure proper design function (installation of a system to allow for ease of inspection should be considered).

§ 250.873 Subsea gas lift requirements.

If you choose to install a subsea gas lift system, you must design your system in accordance with the following or as approved in your DWOP. You must:

(a) Design the gas lift supply pipeline in accordance with the API RP 14C (incorporated by reference as specified in § 250.198) for the gas lift supply system located on the platform.

(b) Meet the appropriate requirements in the following table:

If your subsea gas lift system introduces the lift gas to the . . .	Then you must install a . . .				Additional requirements
	API Spec 6A and API Spec 6AV1 (both incorporated by reference as specified in § 250.198) gas-lift shutdown valve (GLSDV), and . . .	FSV on the gas-lift supply pipeline . . .	PSHL on the gas-lift supply . . .	API Spec 6A and API Spec 6AV1 manual isolation valve . . .	
(1) Subsea Pipelines, Pipeline Risers, or Manifolds via an External Gas Lift Pipeline.	meet all of the requirements for the BSDV described in 250.835 and 250.836 on the gas-lift supply pipeline.	upstream (in board) of the GLSDV.	pipeline upstream (in board) of the GLSDV.	downstream (out board) of the PSHL and above the waterline. This valve does not have to be actuated.	(i) Ensure that the MAOP of a subsea gas lift supply pipeline is equal to the MAOP of the production pipeline. an actuated fail-safe close gas-lift isolation valve (GLIV) located at the point of intersection between the gas lift supply pipeline and the production pipeline, pipeline riser, or manifold. (ii) Install an actuated fail-safe close gas-lift isolation valve (GLIV) located at the point of intersection between the gas lift supply pipeline and the production pipeline, pipeline riser, or manifold. Install the GLIV downstream of the underwater safety valve(s) (USV) and/or AIV(s).
(2) Subsea Well(s) through the Casing String via an External Gas Lift Pipeline.	Locate the GLSDV within 10 feet of the first of access to the gas-lift riser or topsides umbilical termination assembly (TUTA) (i.e., within 10 feet of the edge of the platform if the GLSDV is horizontal, or within 10 feet above the first accessible working deck, excluding the boat landing and above the splash zone, if the GLSDV is in the vertical run of a riser, or within 10 feet of the TUTA if using an umbilical).	on the platform upstream (in board) of the GLSDV.	pipeline on the platform downstream (out board) of the GLSDV.	downstream (out board) of the PSHL and above the waterline. This valve does not have to be actuated.	Install an actuated, fail-safe-closed GLIV on the gas lift supply pipeline near the wellhead to provide the dual function of containing annular pressure and shutting off the gas lift supply gas. If your subsea trees or tubing head is equipped with an annulus master valve (AMV) or an annulus wing valve (AWV), one of these may be designated as the GLIV. Consider installing the GLIV external to the subsea tree to facilitate repair and or replacement if necessary.

If your subsea gas lift system introduces the lift gas to the . . .	Then you must install a . . .				Additional requirements
	API Spec 6A and API Spec 6AV1 (both incorporated by reference as specified in § 250.198) gas-lift shutdown valve (GLSDV), and . . .	FSV on the gas-lift supply pipeline . . .	PSHL on the gas-lift supply . . .	API Spec 6A and API Spec 6AV1 manual . isolation valve . . .	
(3) Pipeline Risers via a Gas-Lift Line Contained within the Pipeline Riser.	locate the GLSDV within 10 feet of the first of access to the gas-lift riser or TUTA (i.e., within 10 feet of the edge of the platform if the GLSDV is horizontal, or within 10 feet above the first accessible working deck, excluding the boat landing and above the splash zone, if the GLSDV is in the vertical run of a riser, or within 10 feet of the TUTA if using an umbilical).	upstream (in board) of the GLSDV.	flowline upstream (in board) of the FSV.	downstream (out board) of the GLSDV.	(i) Ensure that the gas-lift supply flowline from the gas-lift compressor to the GLSDV is pressure-rated for the MAOP of the pipeline riser. Ensure that any surface equipment associated with the gas-lift system is rated for the MAOP of the pipeline riser. (ii) Ensure that the gas-lift compressor discharge pressure never exceeds the MAOP of the pipeline riser. (iii) Suspend and seal the gas-lift flowline contained within the production riser in a flanged API Spec. 6A component such as an API Spec. 6A tubing head and tubing hanger or a component designed, constructed, tested, and installed to the requirements of API Spec. 6A. Ensure that all potential leak paths upstream or near the production riser BSDV on the platform provide the same level of safety and environmental protection as the production riser BSDV. In addition, ensure that this complete assembly is fire-rated for 30 minutes. Attach the GLSDV by flanged connection directly to the API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser. To facilitate the repair or replacement of the GLSDV or production riser BSDV, you may install a manual isolation valve between the GLSDV and the API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser, or outboard of the production riser BSDV and inboard of the API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser.

(c) Follow the valve closure times and hydraulic bleed requirements according to your approved DWOP for the following:

(1) Electro-hydraulic control system with gas lift,

(2) Electro-hydraulic control system with gas lift with loss of communications,

(3) Direct-hydraulic control system with gas lift.

(d) Follow the gas lift valve testing requirements according to the following table:

Type of gas lift system	Valve	Allowable leakage rate	Testing frequency
(i) Gas Lifting a subsea pipeline, pipeline riser, or manifold via an external gas lift pipeline.	GLSDV	Zero leakage	Monthly, not to exceed 6 weeks.
	GLIV	N/A	Function tested quarterly, not to exceed 120 days.
(ii) Gas Lifting a subsea well through the casing string via an external gas lift pipeline.	GLSDV	Zero leakage	Monthly, not to exceed 6 weeks.
	GLIV	400 cc per minute of liquid or 15 scf per minute of gas.	Function tested quarterly, not to exceed 120 days.
(iii) Gas lifting the pipeline riser via a gas lift line contained within the pipeline riser.	GLSDV	Zero leakage	Monthly, not to exceed 6 weeks.

§ 250.874 Subsea water injection systems.

If you choose to install a subsea water injection system, you must design your system in accordance with the following or as approved in your DWOP. You must:

(a) Adhere to the water injection requirements described in API RP 14C (incorporated by reference as specified in § 250.198) for the water injection equipment located on the platform. In accordance with § 250.830, either a surface-controlled SSSV or a water injection valve (WIV) that is self-

activated and not controlled by emergency shut-down (ESD) or sensor activation must be installed in a subsea water injection well.

(b) Equip a water injection pipeline with a surface FSV and water injection shutdown valve (WISDV) on the surface facility.

(c) Install a PSHL sensor upstream (in board) of the FSV and WISDV.

(d) All subsea tree(s), wellhead(s), connector(s), tree valves, and an surface-controlled SSSV or WIV associated with a water injection system must be rated for the maximum anticipated injection pressure.

(e) Consider the effects of hydrogen sulfide (H2S) when designing your water flood system.

(f) Follow the valve closure times and hydraulic bleed requirements according to your approved DWOP for the following:

(1) Electro-hydraulic control system with water injection,

(2) Electro-hydraulic control system with water injection with loss of communications,

(3) Direct-hydraulic control system with water injection.

(g) Follow the WIV testing requirements according to the following:

(1) WIV testing table,

Valve	Allowable leakage rate	Testing frequency
(i) WISDV	Zero leakage	Monthly, not to exceed 6 weeks.
(ii) Surface-controlled SSSV or WIV	400 cc per minute of liquid or 15 scf per minute of gas.	Semiannually, not to exceed 6 calendar months.

(2) Should a designated USV on a water injection well fail to test, notify the appropriate BSEE District Manager, and either designate another API Spec 6A and API Spec. 6AV1 (both incorporated by reference as specified in § 250.198) certified subsea valve as your USV, or modify the valve closure time of the surface-controlled SSSV or WIV to close within 20 minutes after sensor activation for a water injection line PSHL or platform ESD/TSE (host). If a USV on a water injection well fails and the surface-controlled SSSV or WIV cannot be tested because of low reservoir pressure, submit a request to the appropriate BSEE District Manager with an alternative plan that ensures subsea shutdown capabilities.

(3) Function test the WISDV quarterly if you are operating under a departure approval to not test the WISDV. You may request approval from the appropriate BSEE District Manager to forgo testing the WISDV until the shut-in tubing pressure of the water injection well is greater than the external hydrostatic pressure, provided that the USVs meet the allowable leakage rate listed in the valve closure testing table in § 250.880 (c)(4)(ii). Should the USVs fail to meet the allowable leakage rate, submit a request to the appropriate BSEE District Manager with an alternative plan that ensures subsea shutdown capabilities.

(f) If you experience a loss of communications during water injection operations, comply with the following:

(1) Notify the appropriate BSEE District Manager within 12 hours after loss of communication detection; and

(2) Obtain approval from the appropriate BSEE District Manager, to continue to inject with loss of communication. The District Manager may also order a shut-in. In that case, the BSEE District Manager may approve an alternate hydraulic bleed schedule to allow for an orderly shut-in.

§ 250.875 Subsea Pump Systems.

If you choose to install a subsea pump system, you must design your system in accordance with the following or as approved in your DWOP. You must:

(a) Install an isolation valve at the inlet of your subsea pump module.

(b) Install a PSHL sensor upstream of the BSDV, if the maximum possible discharge pressure of the subsea pump operating in a dead head condition (that is the maximum shut-in tubing pressure at the pump inlet and a closed BSDV) is less than the MAOP of the associated pipeline.

(c) Comply with the following, if the maximum possible discharge pressure of the subsea pump operating in a dead head situation could be greater than the MAOP of the pipeline:

(1) Install, at minimum, two independent functioning PSHL sensors upstream of the subsea pump and two independent functioning PSHL sensors downstream of the pump.

(i) Ensure PSHL sensors are operational when the subsea pump is in service; and

(ii) Ensure that PSHL activation will shut down the subsea pump, the subsea inlet isolation valve, and either the designated USV1, the USV2, or the alternate isolation valve.

(iii) If more than two PSHL sensors are installed upstream and downstream of the subsea pump for operational flexibility, then a 2 out of 3 voting logic may be implemented in which the subsea pump remains operational provided a minimum of two independent PSHL sensors are functional both upstream and downstream of the pump.

(2) Interlock the subsea pump motor with the BSDV to ensure that the pump cannot start or operate when the BSDV is closed, incorporate the following permissive signals into the control system for your subsea pump, and ensure that the subsea pump is not able to be started or re-started unless:

(i) The BSDV is open;

(ii) All automated valves downstream of the subsea pump are open;

(iii) The upstream subsea pump isolation valve is open; and

(iv) All alarms associated with the subsea pump operation (pump temperature high, pump vibration high, pump suction pressure high, pump discharge pressure high, pump suction flow low) are cleared or continuously monitored (personnel should observe visual indicators displayed at a designated control station and have the capability to initiate shut-in action in the event of an abnormal condition).

(3) Monitor the separator for seawater.

(4) Ensure that the subsea pump systems are controlled by an electro-hydraulic control system.

(d) Follow the valve closure times and hydraulic bleed requirements according to your approved DWOP for the following:

(1) Electro-hydraulic control system with a subsea pump,

(2) A loss of communications with the subsea wells and not the subsea pump control system without a ESD or sensor activation,

(3) A loss of communications with the subsea pump control system, but not the subsea wells,

(4) A loss of communications with the subsea wells and the subsea pump control system.

(e) Follow the subsea pump testing requirements by:

(1) Performing a complete subsea pump function test, including full shutdown after any intervention, or changes to the software and equipment affecting the subsea pump; and

(2) Testing the subsea pump shutdown including PSHL sensors both

upstream and downstream of the pump each quarter, but in no case more than 120 days between tests. This testing may be performed concurrently with the ESD function test.

§ 250.876 Fired and Exhaust Heated Components.

Every 5 years you must have a qualified third party remove, inspect, repair, or replace tube-type heaters that are equipped with either automatically controlled natural or forced draft burners installed in either atmospheric or pressure vessels that heat hydrocarbons and/or glycol. If removal and inspection indicates tube-type heater deficiencies, you must complete and document repairs or replacements. You must document the inspection results, retain such documentation for at least 5 years, and make them available to BSEE upon request.

§§ 250.877 through 250.879 [Reserved]

Safety Device Testing

§ 250.880 Production safety system testing.

(a) Notification. You must:

(1) Notify District Manager at least 72 hours before commencing production, so that BSEE may witness a preproduction test and conduct a preproduction inspection of the integrated safety system.

(2) Notify the District Manager upon commencement of production so that BSEE may conduct a complete inspection.

(3) Notify the District Manager and receive BSEE approval before you perform any subsea intervention that modifies the existing subsea infrastructure in a way that may affect the casing monitoring capabilities and testing frequencies contained in the table set forth in paragraph (c)(4).

(b) Testing methodologies. You must:

(1) Test safety valves and other equipment at the intervals specified in the tables set forth in paragraph (c) or more frequently if operating conditions warrant; and

(2) Perform testing and inspection in accordance with API RP 14C, Appendix D (incorporated by reference as specified in § 250.198), and the additional requirements found in the tables of this section or as approved in the DWOP for your subsea system.

(c) Testing frequencies and allowable parameters.

(1) The following testing requirements apply to subsurface safety devices on dry tree wells:

Item name	Testing frequency, allowable leakage rates, and other requirements
(i) Surface-controlled SSSVs (including devices installed in shut-in and injection wells).	Not to exceed 6 months. Also test in place when first installed or reinstalled. If the device does not operate properly, or if a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 cubic feet per minute is observed, the device must be removed, repaired, and reinstalled or replaced. Testing must be according to API RP 14B (ISO 10417:2004) (incorporated by reference as specified in § 250.198) to ensure proper operation.
(ii) Subsurface-controlled SSSVs	Not to exceed 6 months for valves not installed in a landing nipple and 12 months for valves installed in a landing nipple. The valve must be removed, inspected, and repaired or adjusted, as necessary, and reinstalled or replaced.
(iii) Tubing plug	Not to exceed 6 months. Test by opening the well to possible flow. If a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 cubic feet per minute is observed, the plug must be removed, repaired, and reinstalled, or replaced. An additional tubing plug may be installed in lieu of removal.
(iv) Injection valves	Not to exceed 6 months. Test by opening the well to possible flow. If a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 cubic feet per minute is observed, the valve must be removed, repaired and reinstalled, or replaced.

(2) The following testing requirements apply to surface valves:

Item name	Testing frequency and requirements
(i) PSVs	Once each 12 months, not to exceed 13 months between tests. Valve must either be bench-tested or equipped to permit testing with an external pressure source. Weighted disc vent valves used as PSVs on atmospheric tanks may be disassembled and inspected in lieu of function testing.
(ii) Automatic inlet SDVs that are actuated by a sensor on a vessel or compressor.	Once each calendar month, not to exceed 6 weeks between tests.
(iii) SDVs in liquid discharge lines and actuated by vessel low-level sensors.	Once each calendar month, not to exceed 6 weeks between tests.
(iv) SSVs	Once each calendar month, not to exceed 6 weeks between tests. Valves must be tested for both operation and leakage. You must test according to API RP 14H (incorporated by reference as specified in § 250.198). If an SSV does not operate properly or if any fluid flow is observed during the leakage test, the valve must be immediately repaired or replaced.
(v) FSVs	Once each calendar month, not to exceed 6 weeks between tests. All FSVs must be tested, including those installed on a host facility in lieu of being installed at a satellite well. You must test FSVs for leakage in accordance with the test procedure specified in API RP 14C, appendix D, section D4, table D2 subsection D (incorporated by reference as specified in § 250.198). If leakage measured exceeds a liquid flow of 400 cubic centimeters per minute or a gas flow of 15 cubic feet per minute, the FSV must be repaired or replaced.

(3) The following testing requirements apply to surface safety systems and devices:

Item name	Testing frequency and requirements
(i) Pumps for firewater systems	Must be inspected and operated according to API RP 14G, Section 7.2 (incorporated by reference as specified in § 250.198).
(ii) Fire- (flame, heat, or smoke) detection systems.	Must be tested for operation and recalibrated every 3 months provided that testing can be performed in a non-destructive manner. Open flame or devices operating at temperatures that could ignite a methane-air mixture must not be used. All combustible gas-detection systems must be calibrated every 3 months.
(iii) ESD systems	(A) Pneumatic based ESD systems must be tested for operation at least once each calendar month, not to exceed 6 weeks between tests. You must conduct the test by alternating ESD stations monthly to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation. (B) Electronic based ESD systems must be tested for operation at least once every three calendar months, not to exceed 120 days between tests. The test must be conducted by alternating ESD stations to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation. (C) Electronic/pneumatic based ESD systems must be tested for operation at least once every three calendar months, not to exceed 120 days between tests. The test must be conducted by alternating ESD stations to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation.
(iv) TSH devices	Must be tested for operation at least once every 12 months, excluding those addressed in paragraph (b)(3)(v) of this section and those that would be destroyed by testing. Those that could be destroyed by testing must be visually inspected and the circuit tested for operations at least once every 12 months.
(v) TSH shutdown controls installed on compressor installations that can be nondestructively tested.	Must be tested every 6 months and repaired or replaced as necessary.
(vi) Burner safety low	Must be tested at least once every 12 months.
(vii) Flow safety low devices	Must be tested at least once every 12 months.
(viii) Flame, spark, and detonation arrestors	Must be visually inspected at least once every 12 months.
(ix) Electronic pressure transmitters and level sensors: PSH and PSL; LSH and LSL.	Must be tested at least once every 3 months, but no more than 120 days elapse between tests.
(x) Pneumatic/electronic switch PSH and PSL; pneumatic/electronic switch/electric analog with mechanical linkage LSH and LSL controls.	Must be tested at least once each calendar month, but with no more than 6 weeks elapsed time between tests.

(4) The following testing requirements apply to subsurface safety devices and associated systems on subsea tree wells:

Item name	Testing frequency, allowable leakage rates, and other requirements
(i) Surface-controlled SSSVs (including devices installed in shut-in and injection wells).	Tested semiannually, not to exceed 6 months. If the device does not operate properly, or if a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 cubic feet per minute is observed, the device must be removed, repaired, and reinstalled or replaced. Testing must be according to API RP 14B (ISO 10417:2004) (incorporated by reference as specified in § 250.198) to ensure proper operation, or as approved in your DWOP.
(ii) USVs	Tested quarterly, not to exceed 120 days. If the device does not function properly, or if a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 cubic feet per minute is observed, the valve must be removed, repaired and reinstalled, or replaced.
(iii) BSDVs	Tested monthly, not to exceed 6 weeks. Valves must be tested for both operation and leakage. You must test according to API RP 14H for SSVs (incorporated by reference as specified in § 250.198). If a BSDV does not operate properly or if any fluid flow is observed during the leakage test, the valve must be immediately repaired or replaced.
(iv) Electronic ESD logic	Tested monthly, not to exceed 6 weeks.
(v) Electronic ESD function	Tested quarterly, not to exceed 120 days. Shut-in at least one well during the ESD function test. If multiple wells are tied back to the same platform, a different well should be shut-in with each quarterly test.

(5) The following testing and other requirements apply to subsea wells shut-in and disconnected from monitoring capability for periods greater than 6 months:

(i) Each well must be left with three pressure barriers: A closed and tested surface-controlled SSSV, a closed and tested USV, and one additional closed and tested tree valve.

(ii) Acceptance criteria for the tested pressure barriers prior to the rig leaving the well are as follows:

(A) The surface-controlled SSSV must be tested for leakage in accordance with § 250.828(c).

(B) The USV and other pressure barrier must be tested to confirm zero leakage.

(iii) A sealing pressure cap must be installed on the flowline connection hub until installation of and connection to the flowline. A pressure cap must be designed to accommodate monitoring for pressure between the production wing valve and cap. A diagnostics capability must be integrated into the design such that a remotely operated vehicle can bleed pressure off and monitor for buildup, confirming barrier integrity.

(iv) Pressure monitoring at the sealing pressure cap on the flowline connection hub must be performed in each well at intervals not to exceed 12 months from the time of initial testing (prior to demobilizing rig from field).

(v) A drilling vessel capable of intervention into the disconnected well must be in the field or readily accessible for use until the wells are brought on line.

(vi) The shut-in period for each disconnected well must not exceed 24 months, unless authorized by BSEE.

§§ 250.881–250.889 [Reserved]

Records and Training

§ 250.890 Records.

(a) You must maintain records that show the present status and history of each safety device. Your records must include dates and details of installation, removal, inspection, testing, repairing, adjustments, and reinstallation.

(b) You must maintain these records for at least 2 years. You must maintain the records at your field office nearest the OCS facility and a secure onshore location. These records must be available for review by a representative of BSEE.

(c) You must submit to the appropriate District Manager a contact list for all OCS operated platforms at least annually or when contact information is revised. The contact list must include:

(1) Designated operator name;

(2) Designated person in charge (PIC);

(3) Facility phone number(s), if applicable;

(4) Facility fax number, if applicable;

(5) Facility radio frequency, if applicable;

(6) Facility helideck rating and size, if applicable; and

(7) Facility records location if not contained on the facility.

§ 250.891 Safety device training.

You must ensure that personnel installing, repairing, testing, maintaining, and operating surface and subsurface safety devices and personnel operating production platforms, including but not limited to separation, dehydration, compression, sweetening, and metering operations, are trained in accordance with the procedures in subpart S of this part.

§§ 250.892–250.899 [Reserved]

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Part III

Commodity Futures Trading Commission

17 CFR Parts 4 and 50

Clearing Exemption for Certain Swaps Entered Into by Cooperatives; Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators; Final Rules

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 50

RIN 3038–AD47

Clearing Exemption for Certain Swaps Entered Into by Cooperatives

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is adopting final regulations pursuant to its authority under section 4(c) of the Commodity Exchange Act ("CEA") allowing cooperatives meeting certain conditions to elect not to submit for clearing certain swaps that such cooperatives would otherwise be required to submit for clearing in accordance with section 2(h)(1) of the CEA.

DATES: Effective September 23, 2013.

FOR FURTHER INFORMATION CONTACT: Brian O'Keefe, Deputy Director, 202–418–5658, *bokeefe@cftc.gov*, Division of Clearing and Risk, or Erik F. Remmler, Deputy Director, 202–418–7630, *eremmler@cftc.gov*, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

I. Background

The CEA, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"),[1] establishes a comprehensive new regulatory framework for swaps. The CEA requires a swap: (1) To be submitted for clearing through a derivatives clearing organization ("DCO") if the Commission has determined that the swap is required to be cleared, unless an exception or exemption to the clearing requirement applies; (2) to be reported to a swap data repository ("SDR") or the Commission; and (3) if such swap is subject to a clearing requirement, to be executed on a designated contract market ("DCM") or swap execution facility ("SEF"), unless no DCM or SEF has made the swap available to trade.

Section 2(h)(1)(A) of the CEA establishes a clearing requirement for swaps, providing that "[i]t shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a [DCO] that is registered under [the CEA] or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared." [2] However, section 2(h)(7)(A) of the CEA provides that the clearing requirement of section 2(h)(1)(A) shall not apply to a swap if one of the counterparties to the swap: "(i) is not a financial entity; (ii) is using swaps to hedge or mitigate commercial risk; and (iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps" (referred to hereinafter as the "end-user exception").[3] The Commission has adopted § 39.6 (now recodified as § 50.50 [4]) to implement certain provisions of section 2(h)(7). Accordingly, any swap that is required to be cleared by the Commission pursuant to section 2(h)(2) of the CEA must be submitted to a DCO for clearing by the counterparties unless the conditions of § 50.50 are satisfied or another exemption adopted by the Commission applies.

Congress adopted the end-user exception in section 2(h)(7) of the CEA to permit certain non-financial entities to continue using non-cleared swaps to hedge or mitigate risks associated with their underlying businesses, such as manufacturing, energy exploration, farming, transportation, or other commercial activities. Additionally, in section 2(h)(7)(C)(ii) of the CEA, the Commission was directed to "consider whether to exempt [from the definition of 'financial entity'] small banks, savings associations, farm credit system institutions, and credit unions, including:

(I) Depository institutions with total assets of $10,000,000,000 or less;

(II) farm credit system institutions with total assets of $10,000,000,000 or less; or

(III) credit unions with total assets of $10,000,000,000 or less."

In § 50.50(d), the Commission identifies which financial entities are small financial institutions and establishes an exemption from the definition of "financial entity" for these small financial institutions pursuant to section 2(h)(7)(C)(ii) (the "small financial institution exemption"). The small financial institution exemption largely adopts the language of section 2(h)(7)(C)(ii) in providing for an exemption from the definition of "financial entity" for the types of section 2(h)(7)(C)(ii) institutions having total assets of $10 billion or less.

On December 23, 2010, the Commission published for public comment a notice of proposed rulemaking ("end-user exception NPRM") to implement the end-user exception.[5] Several parties that commented on the end-user exception NPRM recommended that the Commission extend relief from clearing to cooperatives.[6] These commenters primarily reasoned [7] that the member ownership nature of cooperatives and the fact that cooperatives act in the interests of members that are non-financial entities or cooperatives whose members are non-financial entities, justified allowing the cooperatives to also elect the end-user exception. In effect, they proposed that because a cooperative acts in the interests of its members when facing the larger financial markets, the end-user exception that would be available to a cooperative's members should also be available to the cooperative. Accordingly, commenters asserted, if the members themselves could elect the end-user exception, then the Commission should permit the cooperatives to do so as well.[8]

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[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

[3] *See* section 2(h)(7)(A) of the CEA, 7 U.S.C. 2(h)(7)(A).

[4] 77 FR 74284 (Dec. 13, 2012). The Commission re-codified the end-user exception regulations as § 50.50 so that market participants are able to locate all rules related to the clearing requirement in one part of the Code of Federal Regulations. Because of this re-codification, all citations thereto in this final release will be to the sections as renumbered.

[5] *See* 75 FR 80747 (Dec. 23, 2010).

[6] *See*, e.g., comments received on the end-user exception NPRM from: Agricultural Leaders of Michigan (ALM), The Farm Credit Council (FCC), Allegheny Electric Cooperative, Inc. (AEC), Garkane Energy Cooperative, Inc. (GEC), National Council of Farmer Cooperatives, Dairy Farmers of America, and National Rural Utilities Cooperative Finance Corporation (CFC). Comments received on the end-user exception NPRM can be found on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=937*.

[7] Other reasons given for providing an exemption from clearing to cooperatives, including risk considerations, are discussed below.

[8] In addition to the comments received on the end-user exception NPRM, the Commission notes that several Senators and members of the House of Representatives have expressed similar support in committee hearings for ensuring that the implementation of the Dodd-Frank Act does not change the way financial cooperatives operate in relation to their members. *See*, e.g., *Oversight Hearing: Implementation of Title VII of the Wall St. Reform and Consumer Prot. Act Before the S. Comm. on Agric.*, 112th Cong. 18 (2011) (statement of Sen. Debbie Stabenow, Chairwoman, S. Comm. on Agric.) ("I just want to make sure that . . . you're saying or that you're going to guarantee that the relationship between farmers and co-ops will be preserved and that farmers will continue to have affordable access to risk management tools."); *One Year Later—The Wall St. Reform and Consumer Prot. Act: Hearing Before the S. Comm. on Agric.*, 112th Cong. 14 (statement of Sen. Amy Klobuchar, Member, S. Comm. on Agric.) ("I hope there is a way to uniquely define farmer co-ops so they can continue to do the kinds of things that they do.");

However, section 2(h)(7) of the CEA does not differentiate cooperatives from other types of entities and therefore, cooperatives that are "financial entities," as defined in section 2(h)(7)(i) of the CEA, are unable to elect the end-user exception unless they qualify for the small financial institution exemption. Some commenters recommended including cooperatives that are "financial entities" with total assets in excess of $10 billion in the small financial institution exemption.[9] However, as explained in greater detail in the final release for § 50.50, section 2(h)(7)(C)(ii) of the CEA focused on asset size and not on the structure of the financial entity. Accordingly, only cooperatives that are financial entities with total assets of $10 billion or less can qualify as small financial institutions under the small financial institution exemption.

Notwithstanding the foregoing, the Commission recognized that the member-owner structure of cooperatives and the merits of effectively allowing cooperatives to also use the end-user exception when acting in the interests of their members, warranted consideration. Accordingly, the Commission is using the authority provided in section 4(c) of the CEA to finalize § 50.51 (proposed as § 39.6(f)[10]), to permit cooperatives that meet certain qualifications to elect not to clear certain swaps that are otherwise required to be cleared pursuant to section 2(h)(1)(A) of the CEA (hereinafter referred to as the "cooperative exemption"). Under section 4(c) of the CEA, the Commission can subject such exemptive relief to appropriate terms and conditions.[11]

On July 17, 2012, the Commission published for public comment a notice of proposed rulemaking ("NPRM") proposing the cooperative exemption as § 39.6(f) (now § 50.51).[12] The Commission explained that cooperatives have a unique legal structure that differentiates them from other legal business structures in terms of how they are operated and who benefits from their activities. In a cooperative, the members of the cooperative are the principal customers of the cooperative and are also the owners of the cooperative. Accordingly, the cooperatives exist to serve their member-owners and do not act for their own profit.[13] The member-owners of the cooperative collectively have full control over the governance of the cooperative. In a real sense, a cooperative is not separable from its member-owners. The cooperative exists to act in the mutual interests of its member-owners in the marketplace.

As described in greater detail below in section II, some cooperatives provide financial services to their members including lending and providing swaps, and the cooperatives sometimes hedge or mitigate risks associated with those lending activities with other financial entities such as swap dealers ("SDs"). The memberships of some of these cooperatives consist of entities that can each elect the end-user exception when entering into a swap. However, the end-user exception is unavailable to some of those cooperatives because they fall within the definition of "financial entity" and have assets in excess of $10 billion. Accordingly, if the cooperative members continue to enter into loans and swaps with their cooperative, they would not receive the full benefits of the end-user exception because the cooperative would have to clear its swaps even though it is entering into the swaps to offset the risks associated with financial activities with its members or to hedge risks associated with wholesale borrowing activities, the proceeds of which are used to fund member loans. In effect, absent an exception from the clearing requirement for a cooperative that is providing certain swap services to its members, the cooperative structure would be unable—solely because the cooperative is large and has substantial assets—to achieve the intended benefits for its members who can elect the end-user exception. In light of the foregoing, the Commission is exercising its authority under section 4(c) of the CEA to establish the cooperative exemption.

The Commission received approximately 25 comment letters and Commission staff participated in approximately two ex parte meetings concerning the cooperative exemption NPRM.[14] The Commission considered these comments in formulating the final regulations, as discussed below.

II. Financial Entity Cooperatives

In the NPRM, the Commission described the structure of cooperatives that provide financial services to their members to provide context for the underlying rationale for the proposed cooperative exemption. The description provided in the NPRM is summarized below to facilitate an understanding of the comments received and the Commission's responses thereto.

Cooperatives that are "financial entities," as defined in section 2(h)(7)(C)(i) of the CEA, generally serve as collective asset and liability managers for their members. In this role, the cooperatives, in effect, face the financial markets as intermediaries for their members. These cooperatives sometimes enter into swaps with members and with non-member counterparties, typically SDs or other financial entities, to hedge the risks associated with the swaps or loans they execute with their members, or to hedge risks associated with their wholesale borrowing activities, the proceeds of which are used to fund member loans. If these financial entity cooperatives have total assets in excess of $10 billion, then the cooperatives do not qualify for the small financial institution exemption and thus cannot elect the end-user exception.

Some cooperatives with more than $10 billion in total assets have members that are non-financial entities, small financial institutions, or other cooperatives whose members consist of such entities.[15] For example, there are four Farm Credit System ("FCS") banks chartered under Federal law, each of which has total assets in excess of $10 billion.[16] The FCS banks are

Derivatives Reform: the View from Main St.: Hearing Before the H. Comm. on Agric., 112th Cong. 12 (2011) (statement of Rep. Timothy Johnson, Member, H. Comm. on Agric.) ("I'm also concerned, real concerned, representing an area, as a lot of us do, where rural electric cooperatives, agricultural cooperatives, and all that are an essential part of our being, critical, positive entities that really do a whole lot for the infrastructure of this country. . . . And I'm very concerned that we're treating, in many ways, and you are, those cooperatives in a way almost identical to Goldman Sachs, and I think that's—frankly, I think that fall[s] of its own weight."); *The Commodity Futures Trading Comm'n 2012 Agenda: Hearing Before the H. Comm. on Agric.*, 112th Cong. 13 (2012) (statement of Rep. Rick Crawford, Member, H. Comm. on Agric.) ("[Agricultural cooperatives provide] swaps to their members and then enter into [another swap to offset that risk]. This is critical to their ability to continue [to provide] hedging tools to member[s] of their coops. . . . ").

[9] *See, e.g.*, comments received on the end-user exception NPRM from: FCC, CFC, AEC, ALM, and GEC.

[10] For ease of reference, the Commission is re-codifying proposed § 39.6(f) as § 50.51 so that market participants are able to locate all rules related to the clearing requirement in one part of the Code of Federal Regulations.

[11] 7 U.S.C. 6(c)(1).

[12] 77 FR 41940 (July 17, 2012).

[13] For example, the CFC was formed as a nonprofit corporation under the District of Columbia Cooperative Association Act of 1940 to arrange financing for its members and their patrons and for the "primary and mutual benefit of the patrons of the Association and their patrons, as ultimate consumers." CFC Articles of Incorporation and Bylaws, Art. I, (last amended Mar. 1, 2005), available at *https://www.nrucfc.coop/content/dam/cfc_assets/public_tier/publicDocs/governance/CFCbylaws_3_11.pdf*.

[14] All comments received in response to the cooperative exemption NPRM can be viewed on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1237*.

[15] *See, e.g.*, comments received on the end-user exception NPRM from FCC, CFC, AEC, ALM, and GEC.

[16] *See* FCA, 2011 Annual Report on the Farm Credit System, at 11, available at *http://*

Continued

cooperatives primarily owned by their cooperative associations.[17] The FCS banks are regulated and prudentially supervised by the Farm Credit Administration ("FCA"), an independent agency of the Federal government.[18] The Farm Credit Act authorizes the banks "to make loans and commitments to eligible cooperative associations." [19] The FCS association members are, in turn, cooperatives authorized to make loans to farmers and ranchers, rural residents, and persons furnishing farm-related services.[20] In effect, FCS bank cooperatives primarily make loans to FCS association cooperatives, which lend to farmers and ranchers, rural residents, and persons furnishing farm-related services, and these borrowers are member-owners of the FCS associations, which are member-owners of the FCS banks. In addition to the example of the FCS banks, other cooperatives formed under federal and state laws also have a similar entity structure in that they are owned and governed by their members and they exist to serve those members.

The cooperative exemption, in effect, provides the end-user exception created in section 2(h)(7) of the CEA to financial entity cooperatives when acting in the interests of their members and in connection with loans to members. The exemption benefits the members that qualify for the end-user exception (or members that are cooperatives whose own members qualify for the end-user exception) because they own and control the cooperatives, which exist for the mutual benefit of its members. As described in greater detail below,[21] in the laws that establish financial cooperatives as legal entities distinct from other business structures, Congress and state legislatures made a policy determination to facilitate the formation of cooperatives in order to provide the cooperative members with the unique benefits of accessing markets on a cooperative basis. In this way, financial cooperatives were created to serve as an alternative source of capital for their members. Some of the laws establishing cooperatives acknowledge that cooperatives will compete with other market participants and may have certain benefits or advantages that are acceptable for promoting the benefits that members achieve through their cooperatives.[22] Because the cooperatives are established to serve their members and the net earnings they generate through their activities are returned to those members, the benefits of the cooperative exemption ultimately inure to the members of the cooperative. In the context of required clearing and the end-user exception, the cooperative exemption furthers the purpose for which financial cooperatives were established, *i.e.*, to act for the mutual benefit of their members.

III. Comments on the Proposed Cooperative Exemption Rule

A. Introduction

In proposing an exemption for certain swaps entered into by certain cooperatives that are financial entities, the Commission acknowledged in the NPRM that central clearing of swaps is a primary focus of Title VII of the Dodd-Frank Act. Central clearing mitigates financial system risks that could result from swaps and any exemption from central clearing should be narrowly drawn to minimize the impact on the risk mitigation benefits of clearing and should also be in line with the end-user exception requirements of section 2(h)(7) of the CEA. Accordingly, the Commission sought to narrowly tailor the cooperative exemption by limiting the types of entities that could elect the cooperative exemption and the types of swaps for which the exemption could be elected.

The Commission received a number of comment letters both supporting and opposing the proposed cooperative exemption. Fourteen rural electric cooperatives ("Rural Electric Cooperatives") [23] and their trade association, the National Rural Electric Cooperative Association ("NRECA") submitted substantially similar comment letters supporting the rulemaking. The FCC, the National Rural Utilities Cooperative Finance Corporation ("CFC"),[24] the Credit Union National Association ("CUNA"), the American Farm Bureau Federation ("AFBF"), Chris Barnard ("Mr. Barnard"), and the National Council of Farmer Cooperatives ("NCFC") similarly supported the proposed cooperative exemption. Eleven of the twelve Federal Home Loan Banks ("FHL Banks") submitted a comment letter supporting the concept of a cooperative exemption generally, but requested certain changes to the rule as described below.

The American Bankers Association ("ABA"), Lake City Bank, and the Independent Community Bankers of America ("ICBA") submitted comments opposing the cooperative exemption on several grounds. All three opposed the rule on the grounds that it provides cooperatives with advantages at the expense of certain banks. The ABA and ICBA generally objected to the rule because they believe the reasoning behind the proposed rule was faulty and that the rule making did not comply with the requirements of section 4(c) of the CEA and the Administrative Procedure Act ("APA"). They also commented on the efficacy of the cost-benefit analysis in the NPRM.

The following discussion first addresses comments on each paragraph of the proposed rule followed by a discussion of the comments addressing compliance of the proposed rule with the legal parameters applicable to the rulemaking under section 4(c) of the CEA.

B. Regulation 39.6(f)(1) (now § 50.51(a)): Definition of Exempt Cooperative

The end-user exception is generally available to entities, including cooperatives, that are not "financial entities," as defined in section 2(h)(7)(C)(i) of the CEA, and entities that would be financial entities, including cooperatives, but for the fact that they meet the requirements of the small financial institution exemption in § 50.50(d). The proposed cooperative exemption would add an exemption from required clearing for cooperatives that do not fall into these two categories if they meet the definition of "exempt cooperative." Proposed § 39.6(f)(1) (now § 50.51(a)) defines "exempt cooperative" to mean a cooperative that is a "financial entity" solely as defined in section 2(h)(7)(C)(i)(VIII) of the CEA for which each member of the cooperative is either (1) a non-financial entity, (2) a financial institution to which the small financial institution exemption applies, or (3) itself a cooperative each of whose members fall into either of the first two categories.

The Commission received a number of comment letters in support of the Commission's rationale provided in the

www.fca.gov/Download/AnnualReports/2011AnnualReport.pdf.

[17] *See* 12 U.S.C. 2124(c) (providing that "[v]oting stock may be issued or transferred to and held only by . . . cooperative associations eligible to borrow from the banks.").

[18] *See id.* at 2241.

[19] *Id.* at 2128(a).

[20] *See id.* at 2075.

[21] *See* section IV.

[22] *Id.*

[23] *See* Allegheny Electric Cooperative, Inc., Coast Electric Power Association, Choptank Electric Cooperative, Claiborne Electric Cooperative, Inc., Deaf Smith Electric Cooperative Inc., Dixie Electric Cooperative, First Electric Cooperative Inc., Garkane Energy, Hoosier Energy Rural Electric Cooperative, Inc., Mountain View Electric Association, Inc., Pioneer Rural Electric Cooperative, Inc., Sullivan County Rural Electric Cooperative, Inc., Sumter Electric Cooperative, Inc., and Sunflower Electric Power Corporation.

[24] The comment letter from the CFC incorporates, as an attachment, the signatures of approximately 500 individuals associated with nonprofit rural electric cooperatives supporting the cooperative exemption.

NPRM for the proposed definition of exempt cooperative. The Rural Electric Cooperatives and NRECA agreed with the Commission's proposed definition of "exempt cooperative" and the Commission's reasons for establishing the exemption. The Rural Electric Cooperatives commented that the exempt cooperative definition is appropriate because members of exempt cooperatives would be eligible for the end-user exception if entering into swaps on their own. In their view, effectively extending the end-user exception available to the members of an exempt cooperative to the exempt cooperative itself is appropriate because the members act in the financial markets through the cooperatives that they own.

The FCC, the CFC, CUNA, Mr. Barnard, and the NCFC similarly supported the Commission's definition of exempt cooperative. Like the Rural Electric Cooperatives, the FCC suggested that the "unique structure of cooperatives and their relationship to their member-owners" warrants the cooperative exemption. The CFC and Mr. Barnard supported the "pass-through concept" embodied in the cooperative exemption. The FHL Banks commented that the unique ownership structure of cooperatives and the fact that cooperatives act on behalf of "members that are non-financial institutions or small financial institutions" justify the Commission issuing the cooperative exemption.

The ABA and the ICBA submitted comments opposing the definition of exempt cooperative because they believe there is no policy justification for the exemption and that the Commission's reasons for the exemption are not analytically appropriate. They commented that cooperatives do not play a unique role and are not themselves unique. The ABA suggested the Commission ignored the "fact that banks perform the same functions for customers that cooperatives perform for their members." Similarly, the ICBA commented that the Commission has not described how exempt cooperatives differ from commercial banks. According to ICBA, "community banks play the same role on behalf of their customers" that cooperatives play when facing the larger financial markets on behalf of their members. Both the ABA and the ICBA also noted that banks enter into swaps to hedge risks. The ABA noted that almost one-third of all the loans made by the FCS did not involve individual farmers or ranchers.

According to the ICBA, smaller "community" banks should be given the "same exemption as any financial cooperative of the same or larger size." The ICBA and the ABA requested that "smaller" banks, with assets above the $10 billion threshold in the end-user exception, be exempted from mandatory clearing along with cooperatives.

In response, the Commission does not disagree with these comments to the extent that banks often provide the same services to their customers that exempt cooperatives provide to their members. However, the nature of the services provided by cooperatives to their members is not the rationale for the cooperative exemption. The Commission's rationale is based in large part on the relationship between a cooperative and its members, which is different from the relationship between banks and their customers. The cooperative exemption in effect provides the end-user exception created in section 2(h)(7) of the CEA to entities whose members themselves qualify for the end-user exception, but would otherwise not be able to realize the full effects of the exception when those members act in the financial markets through their member-owned exempt cooperatives that do not qualify for the small financial institution exemption. The rule benefits the members who qualify for the end-user exception through the cooperatives that they own and control and exist for their mutual benefit. Because the cooperatives are established to serve their members and the net earnings they generate through their activities are returned to those members, the benefits of the cooperative exemption ultimately inure to the members of the cooperative.

The Commission notes that the definition of "exempt cooperative" is narrowly tailored so that only a cooperative for which each of its members individually, or if it has members that are cooperatives, each of the members of those cooperatives individually, would qualify for the end-user exception would qualify for the cooperative exemption. Furthermore, § 39.6(f)(2) (now § 50.51(b)) provides that the exemption is only available for swaps executed in connection with originating member loans and swaps that hedge or mitigate risk related to loans to members or arising from certain swaps with members. As such, under the final rule, an exempt cooperative shall not elect the exemption for swaps related to non-member activity of the cooperative.

Exempt cooperatives are distinct from banks not because of the services they offer, but because they exist to serve their members' interests and act as intermediaries for their members in the marketplace. The member-owners generally are the customers of the cooperatives and the Commission drafted the proposed rule to be available only to the extent the cooperative exemption is used in connection with member-related activities. Cooperatives are owned by their members and as such, their governing bodies generally consist of members. Their net earnings are returned to their members either through rebates or distributions, often referred to as "patronage," or are retained by the cooperatives as capital to be used to provide services to members. For example, the FCC noted in its comments that FCS cooperatives were established by federal law to operate for the benefit of farmer-owners.[25] The FCC further noted that by law, each cooperative association in the FCS has a board of directors comprised of voting members of the association, and as required by law, at least one "outside" director.[26] Furthermore, voting stock may only be held by farmers, ranchers, producers of aquatic products, and cooperative associations eligible to borrow from FCS institutions.[27] Each owner of association voting stock is entitled to one vote in the affairs of the association, regardless of the amount of the stock held.[28] FCS additionally commented that each year FCS cooperatives pay patronage to their members, both in cash and allocated equity.[29] Furthermore, unlike for-profit entities that generally pay out dividends based on the amount of stock purchased by each investor, as discussed in greater detail below, cooperatives generally pay out or allocate earnings to the member-owners based on the amount of business

[25] The FCC cited Section 1.1(a) of the Farm Credit Act (12 U.S.C. 2001) ("farmer-owned cooperative Farm Credit System") and Section 1.1(b) thereof ("It is the objective of this chapter to continue to encourage farmer- and rancher-borrowers participation in the management, control, and ownership of a permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit, and to modernize and improve the authorizations and means for furnishing such credit and credit for housing in rural areas made available through the institutions constituting the Farm Credit System as herein provided.").

[26] 12 U.S.C. 2072.

[27] 12 U.S.C. 2154a(c)(1)(D)(i).

[28] 12 CFR 611.350.

[29] For example, in 2011, FCS institutions distributed about $903 million in cash patronage and $243 million in stock patronage to the approximately 489,000 system shareholders. Farm Credit Admin., 2011 Annual Report on the Farm Credit System, 18 (2011); Press Release, Fed. Farm Credit Banks Funding Corp., Farm Credit System Reports Net Income of $3.940 Billion for 2011, 5 (Feb. 17, 2012), available at *https://www.farmcreditfunding.com/farmcredit/serve/public/pressre/finin/report.pdf?assetId=198426.*

undertaken by each member with the cooperative.[30]

On the other hand, banks generally are for-profit, publicly or privately held corporations whose investor-owners are not required to be the users of the bank's services, and often are not. The governing bodies of banks, like other for-profit entities, are typically elected by the shareholders whose voting power is determined by the amount of common stock each investor owns. A board of directors of a corporation has a legal duty to the corporation and the shareholders and, accordingly, must consider shareholder value in its actions.[31] As such, unlike the member-focused purposes of exempt cooperatives, a primary purpose of banks is to generate value for their owners, who generally are not their customers. The mission of a cooperative is to act in the interests of its members, while the goal of a for-profit business, whatever its size, is to benefit the owners of that business, which are not necessarily its customers. Unlike a cooperative, which is an extension of its members as a business matter, a bank is not an extension of its customers. Accordingly, the Commission believes the rationale for extending the end-user exception to cooperatives does not apply to banks in the same way.

The ICBA further questioned whether "members" are any different from "customers," because, in the case of the FCS, borrowers can be considered owners or members even if they do not put their own capital into the organization. For example, according to the ICBA, an FCS borrower can become a member by paying an additional $1,000 on a loan or one percent of the loan value, whichever is less.

The FCC commented that the Farm Credit Act and related regulations prescribe minimum stock purchase requirements for FCS borrowers and also require that FCS institutions meet minimum capital standards well in excess of the amount of purchased stock, citing 12 U.S.C. 2151. The FCC noted that as of December 31, 2011, combined FCS association capital was over $24 billion dollars, or 19% of outstanding loans. Furthermore, the FCS noted that "[v]irtually all that capital is the result of income earned and retained."

The Commission believes that the comments of the ICBA and FCC on this issue further demonstrate the uniqueness of the member-owner relationship between exempt cooperatives and their members and how the cooperatives are, in effect, extensions of their members acting in the interests of their members in a way that is not the case for the relationship between other types of financial institutions and their customers. The earnings retained by FCS cooperatives would otherwise be paid out to members pro rata based on the amount of borrowing from the cooperatives. As such, a cooperative member has a vested, pro rata interest in its cooperative based on the amount of business the member does with the cooperative. While a for-profit entity such as a bank also may retain capital, the capital, if paid out to the owners, would be paid to the equity investors, not the customers of the entity and not based on the amount of business the customers do with the entity.

The ICBA and the ABA further commented that some of the entities that the cooperatives are "standing in the marketplace on behalf of" are sophisticated entities and are capable of entering into the swap marketplace on their own and do not need a cooperative to face the market. The ICBA also commented that all of the component entities of cooperatives would have "no trouble arranging financing from private sector sources."

The Commission did not assert in the NPRM that the members of cooperatives could only access financial markets through the cooperatives or that sole access through cooperatives was a reason for the proposed rule. Rather, the Commission recognized that certain entities for which the end-user exception is available have traditionally accessed the markets through financial cooperatives that they own and which exist for their benefit. For example, this relationship is well established and is codified into the federal law that created the FCS.[32] If the cooperative exemption were not adopted by the Commission, these entities would not be able to both continue to use their cooperatives and receive the full benefit of the end-user exception created in the Dodd-Frank Act.

The ICBA questioned the Commission's statement in the preamble to the proposed cooperative exemption that "cooperatives exist to serve their member-owners and do not act for their own profit." The ICBA commented that the FCS, credit unions and other cooperatives "pay their executives millions of dollars each year."

The ICBA, Lake City Bank, and ABA also noted that the FCS and credit unions and other cooperatives that would be able to use the cooperative exemption already enjoy a number of significant advantages, such as low-cost funding, tax exemptions, and, in some cases, government sponsored enterprise ("GSE") status. They expressed concern that providing credit unions, FCS cooperatives, and other cooperatives with an exemption from mandatory clearing would "exacerbate their competitive advantage over banks." Furthermore, the ICBA stated that "FCS lenders have in recent years positioned themselves to act almost identically to banks through deposit taking arrangements, credit card offerings, check writing capabilities and outright illegitimate activities granted by their permissive regulator."

The Commission is not responsible for the creation, administration, or implementation of those legal characteristics of cooperatives referred to in the comments as being "competitive advantages." These characteristics, by and large, flow from policies enacted by Congress or state legislatures. Further, the Commission is not the regulator responsible for the laws and regulations referred to by commenters that govern cooperatives. The Commission has determined without regard to such other asserted benefits for cooperatives, to offer an elective clearing exemption to entities qualifying as exempt cooperatives to extend the full benefits of the end-user exception established in the Dodd-Frank Act to entities that would qualify for that exception, but which choose to act through their cooperatives in the financial marketplace.[33]

Comments regarding the compensation of executives are outside the scope of this rulemaking. The rationale for the cooperative exemption is based on the member-owner structure of cooperatives, not on how much executives are paid or whether that pay is fair. The Commission defers to the regulators who enforce those regulations

[30] *See* 18 a.m. Jur. 2d Cooperative Associations § 19 (2012) ("Ordinarily, the profits of a cooperative association are distributed to its members in the form of patronage refunds or dividends in amounts determined by the use made of the association facilities by the patrons, and statutes frequently so provide.").

[31] *See, e.g.*, 18B Am. Jur. 2d *Corporations* 1460 (2012).

[32] "It is declared to be the policy of the Congress . . . that the farmer-owned cooperative [FCS] be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations." 12 U.S.C. 2001(a).

[33] For a discussion of the related "fair competition" provision in section 4(c), see section IV herein.

for issues related to executive compensation..

With respect to swaps, the ICBA noted that cooperatives and community banks both enter into swaps to hedge the interest rate risk of loans to their customers or members. The ICBA suggested that swaps hedging the underlying risks of loans to customers pose the same lower risk to the financial system that the FCC claims regarding swaps hedging the risks of loans to its cooperative members.

The Commission notes that it is not relying on the assertion by the FCC that swaps related to hedging loans to cooperative members may be less risky than other types of swaps that financial entities may undertake as a primary reason for distinguishing exempt cooperatives from other types of lending entities.[34] As explained in the NPRM, the potential lower risk of such swaps is, however, one of the reasons why the Commission is restricting the cooperative exemption to swaps related to member loans.

The National Association of Federal Credit Unions requested that the Commission specify that the cooperative exemption applies to "all credit unions." The Commission clarifies that the exemption applies to all cooperatives, including credit unions that meet the definition of "exempt cooperative" in the final rule. The Commission does not have enough information to determine whether "all credit unions" are eligible for the exemption. Whether any particular credit union meets the definition of an exempt cooperative will depend on the relevant facts and circumstances for that credit union.

The FHL Banks stated that they would not qualify as exempt cooperatives because each FHL Bank has one or more members that are financial institutions that do not qualify for the small financial institution exemption. The FHL Banks commented that the cooperative exemption, as proposed, would "unfairly and arbitrarily" penalize members of a cooperative that would qualify as small financial institutions under the end-user exception if the cooperative also has one or more large financial institutions as members. The FHL Banks stated that this would result in the inconsistent treatment of two similarly situated entities. The FHL Banks also point to the joint final rule on the definition of the term "swap dealer," where the Securities and Exchange Commission along with the Commission excluded all swaps between a cooperative and its members from the analysis of whether that cooperative is an SD. This regulatory treatment, according to the FHL Banks, would be "consistent" with the Commission allowing the FHL Banks to elect the cooperative exemption in certain circumstances.

The FHL Banks requested that the Commission remove the limitation that bars a cooperative from being an "exempt cooperative" if it has one or more members that are financial entities that are not themselves cooperatives with members that qualify for the end-user exception. Instead, the FHL Banks suggested that the Commission allow cooperatives to enter into swaps that hedge or mitigate commercial risk related to loans to "qualified members" or arising from swaps entered into with "qualified members" that are eligible for the end-user exception. The FHL Banks proposed the term "qualified member" to mean a member of an exempt cooperative that is (1) not a financial entity, (2) a financial entity that is exempt from the definition of financial entity under the small financial institution exemption in § 50.50(d), or (3) a cooperative, each member of which is not a financial entity or is exempt from mandatory clearing because it qualifies for the small financial institution exemption. The FHL Banks commented that their proposed approach is consistent with the Dodd-Frank Act's objective of mandating that swaps entered into in connection with or for large financial institutions be cleared, without penalizing small financial institutions. According to the FHL Banks, their proposed revisions to the cooperative exemption would allow FHL Banks to qualify as an "exempt cooperative," in appropriate situations. The FHL Banks also stated that this revised cooperative exemption would apply to less than 10% of the outstanding notional amount of the FHL Banks' swaps. The ICBA, like the FHL Banks, suggested that the Commission revise the definition of exempt cooperative to not exclude the FHL Banks "to the extent that they engage in swaps for the benefit of their members who individually qualify as small financial institutions."

In response to the FHL Banks' and the ICBA's comments regarding cooperatives that are ineligible for the cooperative exemption because they have one or more financial entity members, the Commission declines to extend the exemption beyond the parameters as proposed. The Commission disagrees with the FHL Banks' assertion that the cooperative exemption is arbitrary or unfair to financial institutions that qualify for the small financial institution exemption. Under § 39.6(f)(1)(iii)(A) (now § 50.51(a)(3)(i)) of the proposed rule, small financial institutions that meet the definition thereof in § 50.50(d) can be members of exempt cooperatives. These members can include banks, savings associations, FCS institutions, or credit unions, so long as each of them qualifies as a small financial institution under § 50.50(d) (i.e. the institution has total assets of $10 billion or less). They would be treated in the same way as all other entities that may qualify for the end-user exception, and therefore can be members of exempt cooperatives as defined.

Furthermore, as the Commission acknowledged above and in the NPRM, it is concerned that exemptions from the clearing requirement could detract from the systemic risk reducing benefits of clearing. This is particularly a concern if the exemption could be elected for swaps that relate to risks of entities that Congress clearly intended to be subject to the clearing requirement—financial entities as defined in section 2(h)(7)(C) of the CEA that are not expressly exempted from that definition. As such, the Commission narrowed the cooperative exemption to apply solely to a cooperative whose members (or if it has members that are cooperatives, the members of those cooperatives) could themselves elect the end-user exception.

The importance of a narrow cooperative exemption is apparent when considering the possible effect of broadening the exemption in the manner requested by the FHL Banks and ICBA. A fundamental characteristic of cooperatives is that they distribute or allocate the patronage earnings of the cooperative, *i.e.*, the excess of a cooperative's revenues over its costs arising from transactions done with or for its members,[35] to each member based on the amount of patronage by the member, *i.e.*, proportionally based on the amount of business each member does with the cooperative.[36] Accordingly, even if a cooperative with financial entity members only elected

[34] The Commission believes, however, that because exempt cooperatives serve their members and are controlled by their members, it can be expected that cooperatives will focus their swap activity on member loan-related activities.

[35] *See* FASB ASC 905–10–05.

[36] The distribution or allocation of patronage earnings to the members based on the amount of business they do with the cooperative is a guiding principle of cooperatives and is a necessary element for a cooperative to claim a deduction for taxation purposes under federal law. *See* Donald A. Frederick, Income Tax Treatment of Cooperatives: Background, Cooperative Information Report 44, Part 1, 2005 Ed. (April 2005) at 50, citing, *Puget Sound Plywood, Inc.* v. *Commissioner*, 44 T.C. 305, 308 (1965).

the cooperative exemption for swaps related to loans to members that qualify for the end-user exception, a portion of the financial benefits from those swaps in the form of higher net income may shift from the qualifying small members to the larger members as part of the full member pro rata patronage distribution or allocation. Furthermore, the risks of such swaps because they are non-cleared could also negatively impact the large financial institution members to the extent that the net income of the cooperative is negatively impacted.

As an example, consider the relative amounts of lending by the FHL Banks to those of their largest members that do not qualify for the end-user exception as compared to the FHL Banks' lending to their other members. The 12 FHL Banks had 7,774 members as of the end of 2011.[37] Each of the 12 FHL Banks reported the amount of lending business they did with their five largest members in the 2011 Combined Financial Report for the FHL Banks. In 2011, $222.6 billion of the $403.3 billion lent by the FHL Banks to their members was lent to the largest five members of each of the 12 FHL Banks.[38] Of those 60 large members, approximately 49 had total assets in excess of $10 billion.[39] The amount loaned to those 49 members was about $212.7 billion, or 53% of the dollar amount lent by the FHL Banks. Furthermore, those 49 members do not include all members of the FHL Banks with assets greater than $10 billion. Accordingly, the Commission estimates the percentage of lending by the FHL Banks to members that cannot qualify for the end-user exception was higher than 53% of total lending in 2011.[40] If the FHL Banks were able to use the cooperative exemption, under the cooperative structure in which patronage benefits are allocated pro rata based on the amount of business each member does with the cooperative, a significant portion of the benefits and risks from the election of the exemption could spread to the large financial entity members. This would also be the case even if the exemption were only available to swaps related to small financial institutions because the distribution of patronage to the members is based to a large degree on the amount of borrowing by each member.

Similarly, the Commission is concerned that allowing cooperatives with members that do not qualify for the end-user exception to elect the cooperative exemption could open up avenues for abuse of the exemption and evasion of clearing. For example, larger financial entities could form cooperatives capitalized by the large financial entities, but which also include small affiliates or trading partners of the larger financial entities that would qualify as small financial institutions. They could then use these cooperatives to shift their borrowing and swap needs between the large and small entities to be able to take advantage of the cooperative exception in ways that benefit the larger institutions. The Commission considers these risks of abuse of the exemption and evasion of the clearing requirement warrant limiting the definition of exempt cooperative as written. The Commission notes that small financial institutions can elect the end-user exception themselves.

The ICBA noted that the Dodd-Frank Act's requirement that the Commission consider exempting small financial institutions is not necessarily limited to institutions with less than $10 billion in total assets. The ICBA commented that there are 36 "community banks"[41] with assets over $10 billion, and within the category of "community banks," the asset sizes of those banks range from $10.5 billion to $50 billion. The ICBA suggested that the asset size test in the end-user exception be increased up to $50 billion or that community banks be given a "ride along" provision so that community banks that do not qualify for the end-user exception could elect the same exemption as cooperatives.

With these comments, the ICBA is effectively asking the Commission to reopen and revise the end-user exception rule as applied to financial institutions generally. The Commission set forth the reasons for the $10 billion total asset limit for small financial institutions in the end-user exception rulemaking and believes that those reasons remain appropriate. This rulemaking addresses the specific issue of whether an exemption from clearing should be granted to certain cooperatives—including the issue of whether there are relevant differences between the covered cooperatives and private banks—and is not intended as a vehicle for reopening the end-user exception regulations.

C. Regulation 39.6(f)(2) (now § 50.51(b)): Swaps to Which the Cooperative Exemption Applies

Proposed § 39.6(f)(2) (now 50.51(b)) limits application of the cooperative exemption to swaps entered into with members of the exempt cooperative in connection with originating loans[42] for members or swaps entered into by exempt cooperatives that hedge or mitigate risks related to loans to members or arising from member loan-related swaps. This provision assures that the cooperative exemption is used only for swaps related to member lending activities. Since the definition of an exempt cooperative requires that all members be entities who can elect the end-user exception or cooperatives all of whose members can, this condition assures that the exemption will benefit entities who could themselves elect the end-user exception and can be used for swaps that hedge or mitigate risk in connection with member loans and swaps as would be required by section 2(h)(7)(A)(ii) of the CEA.

The primary rationale for the cooperative exemption is based on the unique relationship between cooperatives and their member-owners. Expanding this exemption to include swaps related to non-member activities would extend the exemption beyond its intended purpose. Furthermore, allowing cooperatives to enter into non-cleared swaps with non-member borrowers, or swaps that serve purposes other than hedging member loans or

[37] FHL Banks, Combined Financial Report for the Year Ended December 31, 2011 (issued March 29, 2012) at 43, available at *http://www.fhlb-of.com/ofweb_userWeb/resources/11yrend.pdf*.

[38] *Id.* at 44–45. The Commission arrived at the $222.6 billion amount by adding together the loan values of the 60 individual members listed in the Combined Financial Report of the FHL Banks.

[39] The Commission estimated this number by reviewing publically available information related to the assets of each of the 60 members, such as members' annual 10–K financial reports filed with the SEC (available on the SEC's Web site and posted on the members' Web sites), other annual financial reports and information, such as press releases posted on members' Web sites, and reports published by the Federal Reserve and Federal Deposit Insurance Corporation. As an example, the Commission reviewed the Federal Reserve's Statistical Release for Large Banks, which provided information regarding the total assets held by 27 of the 60 members. *See* Federal Reserve, Statistical Release for Large Banks, available at *http://www.federalreserve.gov/releases/lbr/current/default.htm*.

[40] The FHL Banks Combined Financial Report for the Year Ended December 31, 2011, does not break down lending amount for every member. The 49 members used in the Commission's calculations do not include all members of the FHL Banks with assets greater than $10 billion. Accordingly, while the total percentage of lending to financial entities with total assets greater than $10 billion cannot be calculated based on the information available in the financial report, it is likely significantly higher than the 53% calculated for the 49 members with over $10 billion in total assets for which lending information is available.

[41] The ICBA did not specifically define the term "community banks" other than by reference to the $50 billion maximum asset level.

[42] The phrase "in connection with originating a loan" is similarly used in the definition of swap dealer in § 1.3(ggg) of the Commission's Regulations. *See* 77 FR 30596, 30744 (May 23, 2012). That meaning is incorporated in the final rule.

swaps, would give the cooperatives, which are large financial entities, an exception from regulatory requirements that would not be provided to other market participants engaging in such similar business with respect to non-members that is not justified by their cooperative structure or the provisions of the Dodd-Frank Act.

The CFC commented that it agrees with the types of swaps eligible for the cooperative exemption described by the Commission in the preamble of the NPRM. The CFC stated that the use of the phrase "related to" in the rule text is consistent with the "pass-through concept" that underlies the cooperative exemption. The FCC suggested that the Commission provide additional clarity on the "related to" standard. The FCC commented that the "related to" standard should be broad enough to cover swaps that hedge or mitigate risk related to "interest rate, liquidity, and balance sheet risks" associated with a cooperative's lending business. The FCC pointed to the statement in the preamble to the proposed rule that explained that the "related to" test involves hedging or mitigating risks "associated with" member loans. The FCC supported this interpretation. The FCC requested that the Commission clarify that certain types of transactions would be covered by the cooperative exemption. Specifically, the FCC suggested that the following swaps should be covered by the cooperative exemption: (1) Swaps managing interest rate, liquidity, and balance sheet risk, (2) swaps qualifying as GAAP hedges of bonds and floating rate notes, and (3) swaps hedging FCS banks' liquidity reserves that are required by the FCA.

The AFBF also requested that the Commission clarify that swaps mitigating or hedging balance sheet, interest rate, and liquidity risks associated with their cooperative lending business are eligible for the cooperative exemption.

The Commission's rationale for the cooperative exemption is based on the unique relationship between a cooperative and its members. The primary purpose for the cooperative exemption is to, in effect, provide the full benefits of the end-user exception created in section 2(h)(7) of the CEA to entities that qualify for the end-user exception, but otherwise do not receive the full benefits of the exception if they use their cooperatives as their intermediary in the markets as they have traditionally done. Thus, the Commission will interpret this exemption to ensure that the exemption is only used for swaps that are undertaken to directly further the interests of the members who are themselves eligible for the end-user exception. Accordingly, the Commission declines to expand the types of transactions eligible for the exemption beyond those swaps that are entered into in connection with originating a loan or loans for a member, or swaps that hedge or mitigate commercial risk related to loans with members, or hedge or mitigate the commercial risk associated with a swap between an exempt cooperative and its members in connection with originating loans to members.

With respect to the comments of the AFBF and the FCC regarding swaps that hedge balance sheet, interest rate, and liquidity risks associated with their cooperative lending business, the Commission reiterates that only those swaps relating to member loans are eligible for the exemption, not swaps related to a cooperative's entire lending business to the extent that lending business includes loans to non-members. Accordingly, the exemption may be used for swaps that hedge balance sheet, interest rate, and liquidity risks, but only limited to the extent those risks are related to loans made by the cooperative to its members. The Commission is concerned that without this limitation, cooperatives could use this exemption for risks related to non-member-based activities, which would be inconsistent with the general rationale for the exemption and could result in a competitive benefit to eligible cooperatives that is also inconsistent with the Commission's rationale for the exemption.

As the text of § 39.6(f)(2)(i) (now § 50.51(b)(1)) provides, the phrase "swap is entered into with a member of the exempt cooperative in connection with originating a loan or loans for the member" should be read consistent with 17 CFR 1.3(ggg)(5). Among other things, 17 CFR 1.3(ggg)(5) provides that an acceptable swap includes a swap with members for which the rate, asset, liability or other notional item underlying such swap is, or is directly related to, a financial term of such loan, which includes, without limitation, the loan's duration, rate of interest, the currency or currencies in which it is made and its principal amount; or the swap is required, as a condition of the loan under the exempt cooperative's loan underwriting criteria, to be in place in order to hedge price risks incidental to the borrower's business and arising from potential changes in the price of a commodity (other than an excluded commodity).

Section 39.6(f)(2)(ii) (now § 50.51(b)(2)) also includes in the cooperative exemption swaps that hedge or mitigate risk related to loans to members or arising from a swap or swaps with members entered into pursuant to § 39.6(f)(2)(i) (now § 50.51(b)(1)). This provision includes swaps that the exempt cooperatives may enter into with non-members to hedge or mitigate the risks incurred by the cooperatives related to their member lending activities. Such swaps can include swaps entered into with non-member parties (*e.g.*, SDs) to hedge or mitigate risks such as interest rate risk related to funding loans to fund member loans, or liquidity or balance sheet risks, so long as those liquidity and balance sheet risks arise from activities related to member loans.

As discussed above in this section, the risks must be related to member loans only. For example, the Commission understands that cooperatives sometimes issue bonds or enter into wholesale funding transactions to fund member and non-member loans. The cooperative exemption would permit an exemption for swaps, such as interest rate swaps or interest rate caps, used to hedge those funding transactions, but only to the extent that the interest rate swaps or interest rate caps relate to member-associated loans. Only swaps hedging or mitigating risk arising from the portion of the bonds or wholesale funding proceeds that is related to, or is expected to be related to, direct loans to members are eligible for the exemption. Practically speaking, this means that for a cooperative borrowing on a wholesale basis for both member and non-member-associated loans, the aggregate notional amount of any non-cleared swaps hedging the wholesale funding loans must not exceed the aggregate principal value of the wholesale funding loans less the aggregate principal amount lent or expected to be lent to non-members. Cooperatives would need to adjust that aggregate notional amount by termination or other means as soon as practicable if that aggregate amount is exceeded during the life of any such swaps.

As another example, eligible cooperatives may want to hedge interest rate risk associated with a portfolio of loans to multiple borrowers with one or more swaps. If the loan portfolio being hedged consists solely of loans to members, then the cooperative exemption would be available for those hedging swaps if the requirements of § 39.6(f) (now § 50.51) are met. However, if the cooperative has non-member loans in the loan portfolio being hedged, then the swap may be hedging risk that is not related to

member loans and, if so, the exemption would not be available for that swap. In order to be able to elect the exemption for swaps that hedge a portfolio of member loans and non-member loans, the aggregate notional amount of any such swaps must not exceed the aggregate principal amount of the member loans in the portfolio. Cooperatives would need to adjust that notional amount by termination or other means, such as clearing certain swaps, as soon as practicable if that amount is exceeded during the life of any such swap. The same limitation applies to balance sheet risks. The exemption may be elected for swaps hedging balance sheet risks only to the extent they arise from member loan related activity. For example, balance sheet risks could be hedged with swaps for which the cooperative exemption may be available to the extent that the aggregate notional amount of such swaps does not exceed the aggregate principal amount of member loans.

With respect to FCC's comments relating to "liquidity reserves" required by the FCA, the Commission believes the same general approach described above should apply. That is, swaps hedging risks related to liquidity reserves may be eligible for the exemption only to the extent that such reserves being hedged are related to member loans. For example, if a cooperative makes loans to both members and non-members and hedges risks related to liquidity reserves for the combined loan portfolio, the cooperative would be permitted to elect the exemption for the hedging swaps to the extent that the aggregate notional amount of the swaps does not exceed an amount equal to the total liquidity reserves multiplied by the proportion of the member loans principal amount to the total principal amount of member loans and non-member loans in the cooperative's combined loan portfolio.

The CFC commented that the Commission should modify the language of section 39.6(f)(2)(ii) (now § 50.51(b)(2)), which is a cross-reference to the definition of hedging or mitigating commercial risk for the purposes of the end-user exception, to replace the term "commercial enterprise" with the term "exempt cooperative."

The requested change is not necessary. As explained in the final release for the end-user exception,[43] the use of the term "commercial enterprise" is intended to refer to the underlying activity to which the risk being hedged or mitigated relates in the context of the entity's normal business activities, not simply the type of entity claiming the exemption. For example, in the context of the cooperative exemption, it would include the risks undertaken by a cooperative in the normal course of business of providing loans to members.

D. Regulation 39.6(f)(3) (now § 50.51(c)): Reporting

The Commission believes it is appropriate to impose certain reporting requirements on any entities that may be exempted from the clearing requirement by this regulation. The reporting requirements in the final rule are effectively identical to the reporting requirements for the end-user exception. For purposes of regulatory consistency, § 39.6(f)(3) (now § 50.51(c)) incorporates the provisions of § 50.50(b) with only those changes needed to apply the reporting provisions in the specific context of the cooperative exemption. Regulation 50.50(b) requires one of the counterparties (the "reporting counterparty") to provide, or cause to be provided, to a registered SDR, or if no registered SDR is available, to the Commission, information about how the counterparty electing the exception generally expects to meet its financial obligations associated with non-cleared swaps. In addition, § 50.50(b) requires reporting of certain information that the Commission will use to monitor compliance with, and prevent abuse of, the exception. The reporting counterparty would be required to provide the information at the time the electing counterparty elects the cooperative exemption.

The CUNA requested that the Commission minimize the compliance burdens on cooperatives that elect to use the cooperative exemption, including the notification requirement. The ICBA requested that the Commission modify the reporting requirement when the cooperative exemption is elected. The ICBA commented that the aggregate reporting requirements of § 50.50(b) do not allow the Commission to "monitor actual risks or swaps usage." The ICBA stated that it was concerned that FCS members actively seek to lend to a number of entities that are not owners of the FCS. Because of this, the Commission, according to the ICBA, would not have a way of verifying that the swaps for which an FCS bank elected this exemption are actually eligible for the cooperative exemption. Neither the ICBA nor the CUNA proposed any specific changes to the rule text in connection with their comments.

The Commission has determined not to change the reporting requirements proposed in § 39.6(f)(3) (now § 50.51(c)) and to keep them consistent with the reporting requirements of the end-user exception. The Commission discussed at length in the final release of the end-user exception how the reporting requirements for entities electing the clearing requirement exception are simplified through a check-the-box approach and can be reported along with the other reporting required for all swaps under the Commission's part 45 regulations.[44] The Commission believes that the reporting requirements will provide the Commission with sufficient information, along with the other information to be reported for all swaps and information publicly reported by cooperatives, to detect evasion of required clearing or abuse of the exemption. For example, every swap executed by a cooperative, as is the case with all swaps, must be reported to an SDR or to the Commission and the parties to that swap will be identified. Accordingly, the Commission will be able to review and analyze the economic and other details of all swaps entered into by each cooperative. As such, the Commission is able to monitor actual swap usage by cooperatives. The swap reporting requirements are not intended to monitor the risk levels of individual cooperatives. Monitoring the accumulated risk undertaken by financial cooperatives is generally the purview of their supervisory regulators.

Based on a review of publicly available information and discussions with the regulators of financial cooperatives, the Commission believes that a large majority of lending by these cooperatives is to their members. As such, at present there do not appear to be substantial incentives for cooperatives to abuse the exemption with respect to swaps that are not member related. Notwithstanding the foregoing, the limitations on using the exemption for non-member related activities is clearly established in the final rule and the Commission is confident that the tools available to the Commission for addressing abuse or evasion of the cooperative exemption are sufficient without changing the reporting requirements as proposed.

E. Other Comments on the Proposed Rule

The ABA and the ICBA commented that the FCS, as a GSE, presents a significant risk for the U.S. taxpayer. The ICBA stated that the FCS was "bailed out" by the government during the farm credit crisis in the 1980s. The ABA and the ICBA noted that the FCS,

[43] 77 FR 42572 (July 19, 2012).

[44] 77 FR at 42565–70.

if viewed as a single financial institution because of the mutual support provisions for the FCS institutions, has assets worth more than $230 billion. According to the ICBA, the FCS may be systemically important under the Dodd-Frank Act because it has assets in excess of $50 billion. The ICBA also suggested that the Commission should not provide any exemptions for any institution with over $50 billion in assets because institutions over $50 billion are considered to be potentially systemically important under the Dodd-Frank Act.

In contrast, the FCC commented that the FCS banks have strong protections in place for counterparty default, including, for example, collateral posting agreements, which are overseen by the FCA. According to the FCC, these protections have been effective throughout the recent financial crisis. Accordingly, the FCC suggested that the FCS poses no systemic risk to the U.S. financial system.

The fact that Congress designated the FCS as a GSE does not by itself imply the existence of a sufficiently higher level of risk to justify rejecting the limited exemption from clearing provided to cooperatives. The Commission notes that the FCS is supervised by the FCA, an independent Federal agency charged with overseeing the safety and soundness of the FCS.[45] The Commission acknowledged in the NPRM that the proposed exemption would be available to cooperatives with total assets in excess of $50 billion. However, the Commission believes that the exemption, as narrowly drafted, is appropriate given the benefits conferred by it to the entities Congress designated for the end-user exception who are members of exempt cooperatives. Regarding the possible designation of the FCS as systemically important, the Commission notes that Congress excluded the possibility of the FCS from being designated as systemically important by the Financial Stability Oversight Council.[46]

The CFC requested that the Commission, when coordinating with the other prudential regulators working to finalize the margin rules for non-cleared swaps, ensure that the final margin requirements for non-cleared swaps are consistent with the final cooperative exemption. In effect, the CFC requested that the final margin rules for non-cleared swaps not require margin for swaps eligible for the cooperative exemption.

The Commission intends to continue to work with the other prudential regulators to ensure that the cooperative exemption, along with other clearing exceptions or exemptions, are taken into consideration when finalizing the margin rules for non-cleared swaps.

The ICBA suggested that the Commission should review the exemption "every three years to see if the exemption is warranted on an ongoing basis" because cooperatives will have had time to "adjust to the evolving swaps markets and clearing systems."

The Commission declines to include an explicit sunset or study provision in the final rule. As the Commission's swap regulations are new and the market is evolving in response, the Commission anticipates evaluating its swap-related regulations on an as-needed basis and will modify them as appropriate.

The ABA requested that the Commission extend the comment period for this rule because of the "impending regulatory deadlines, complexity, and economic consequences" of the cooperative exemption.

The Commission declines to extend the comment period because the public was given an opportunity to, and did, participate in the rulemaking process.

IV. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the CEA states that "[i]n order to promote responsible economic or financial innovation and fair competition" the CFTC may exempt any agreement, contract, or transaction subject to section 4(a) from the requirements of that section or any other section of the CEA. Section 4(c) authorizes the Commission to grant exemptive relief to foster the development or continuance of market practices that contribute to market innovation and competition.[47] Congress, in adding section 4(c) to the CEA, intended that the Commission, "in considering fair competition, will implement this provision in a fair and even-handed manner."[48] At the same time, Congress expected that, in doing so, the Commission "will apply consistent standards based on the underlying facts and circumstances of the transaction and markets being considered, and may make distinctions between exchanges and other markets taking into account the particular facts and circumstances involved, consistent with the public interest and the purposes of the Act, where such distinctions are not arbitrary and capricious."[49] While this language refers specifically to distinctions between exchanges and other markets, it implies that Congress more generally expected the Commission, in applying section 4(c)(1), to draw distinctions among different market participants where circumstances justify it.[50] As discussed in detail elsewhere herein, cooperatives are unique in their organizational form, in the way that they act in the interests of their members, and in the well-established public policies that support the ability of cooperative members to make use of their cooperatives for purposes of accessing markets. These unique characteristics justify an exemption specifically tailored to enable non-financial entity end users that are members of cooperatives to realize the full benefits of the end-user exception when they access markets through their cooperatives.

The end-user exception provided in section 2(h)(7) of the CEA is not available to an entity that is a "financial entity," as defined in section 2(h)(7)(C)(i), unless the entity is exempt from the definition because it is a small financial institution based on total assets, as provided in section 2(h)(7)(C)(ii) of the CEA and § 50.50(d), or it meets one of the narrowly drawn exemptions provided in section 2(h)(7) or the Commission regulations. Section 2(h)(7)(C)(ii) does not provide special consideration for cooperatives that meet the definition of "financial entity" and, therefore, the asset size limit applies to them.

As described in the NPRM and above, cooperatives whose member-owners consist exclusively of persons or entities

[45] *See* 12 U.S.C. 2241 (establishing the FCA); 12 U.S.C. 2252 (enumerating the powers of the FCA including the power to ensure the safety and soundness of FCS institutions).

[46] The Financial Stability Oversight Council does not have the authority to determine that the FCS be supervised by the Board of Governors of the Federal Reserve System as a "nonbank financial company" pursuant to section 113 of the Dodd-Frank Act. The definition of "nonbank financial company" includes a "U.S. nonbank financial company" and a "U.S. nonbank financial company" specifically excludes a "Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971." 12 U.S.C. 5311(a)(4); section 102(a)(4)(B) of the Dodd-Frank Act.

[47] *See* Conference Report, H.R. Report 102–978 at 8 (Oct. 2, 1992) ("The goal of providing the Commission with broad exemptive powers . . . is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.").

[48] *Id.* at 78.

[49] *Id.*

[50] *Cf.*, CEA section 4(c)(2)(A), 7 U.S.C. 6(c)(2)(A) (expressly requiring a determination that an exemption from CEA section 4(a), 7 U.S.C. 6, under CEA section 4(c)(1), 7 U.S.C. 6(c)(1), be consistent with the public interest and the purposes of the CEA, one of which is "to promote . . . fair competition . . . among . . . market participants").

that could elect the end-user exception provide important financial services to their members. These cooperatives are, in many respects, an extension of their member-owners and are not separable from their members in any real sense because their mission is to act in the interests of the members. However, some of those cooperatives meet the definition of "financial entity" and have total assets in excess of $10 billion, and therefore the end-user exception is unavailable to them. By extension, the full benefits of the end-user exemption would be unavailable to their members accessing financial services through their cooperatives. Accordingly, absent this exemption, cooperative members would lose the ability to use their cooperative for financial services and at the same time, realize the full benefits of end-user exception. Without the cooperative exemption, when a cooperative engages in financial activity that could benefit from the end-user exception and that activity is in the interest of the cooperative's members, the members would not realize the full benefits of the end-user exception because the cooperative cannot elect the exception. Although the members of a cooperative may seek out financial services from other market participants, some of which may be able to elect the end-user exception, such members would not be able to realize the same benefits as if they had acted through the cooperative. As previously explained, such other market participants were not established solely to serve the interests of its customers, and thus do not provide the same benefits to its customers as the cooperative structure provides to its members, even for similar services. Absent this exception, the members of the cooperative would no longer be able to fully realize the benefits for which the cooperatives were established of being the members' intermediary in the financial markets acting in the mutual interests of the members. In light of this, the Commission determined to exercise its authority under section 4(c) of the CEA to propose § 39.6(f) (now § 50.51) and establish the cooperative exemption.

As noted above, section 4(c) of the CEA authorizes the Commission to provide exemptions to classes of persons "to promote responsible economic or financial innovation and fair competition." Many of the comments focused on this provision. For example, the ICBA commented that the cooperative exemption does not promote financial innovation. According to the ICBA, the Commission's estimate that the cooperative exemption would affect 500 or less swaps a year shows that there is no financial innovation by the exempt cooperatives. The ICBA also commented that the Commission has not shown financial innovation because the proposal excludes the FHL Banks, which, according to the ICBA would potentially provide just as much, "if not more," financial innovation than an exemption for the FCS and credit unions. In essence, the ICBA stated that the cooperative exemption does not promote financial innovation because it is narrowly tailored and affects only a small number of swaps and institutions. In contrast, the FCC commented that "[t]o provide tailored financing products for farmers and farm-related businesses, FCS institutions rely on the safe use of derivatives to manage interest rate, liquidity, and balance sheet risk, primarily in the form of interest rate swaps."

As discussed above in this section IV, Congress contemplated that section 4(c) of the CEA would provide the Commission with the "means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner." [51] Financial cooperatives have existed for over 100 years and were given separate legal status by Congress as far back as 1916.[52] Without these cooperatives, members have less choice in where they can borrow capital and hedge risks related to those borrowing activities. Swaps are a fairly recent innovation in the financial markets that has become an integral part of borrowing and lending. The cooperative form has enabled members to manage their borrowing activities and to use swaps to hedge risks in connection therewith at a lower cost. By pooling member capital in financial cooperatives, members are in effect aggregating their resources to allow them not only to gain a lower cost of funding, but also to be able to hire experienced executives who, as employees of the cooperative, are charged with managing the financial activities of the cooperative and advising the board of directors of the cooperative for the benefit of the member-owners, who often have specific, shared purposes that are the mission focus of the cooperative.[53] Further, because the cooperative members elect the board members of the cooperative on a democratic, one member, one vote, basis,[54] and often most, if not all, board members are cooperative members,[55] the membership, through the governing board, has a unique opportunity to better understand the benefits and risks of swaps used in connection with their financial activities and as a group control the thoughtful application thereof in a responsible manner and for their mutual benefit. The mutual benefit of pooling resources and acting cooperatively is one of the principal policy reasons for the establishment of cooperative structures.[56] These are benefits that the cooperative member-owners would not have as customers of other financial institutions that they do not own or control and that are not established with the mission of providing financing and financial services to a particular type of customer and for their benefit.

In addition, section 4(c) of the CEA does not specify that the financial

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[51] *See* Conference Report, H.R. Report 102–978 at 8 (October 2, 1992).

[52] *See* The Federal Farm Loan Act, Public Law 64–158, 39 Stat. 360 (1916) (repealed 1923) (a predecessor to the Farm Credit Act).

[53] *See, e.g.*, the mission statement of the Farm Credit Bank of Texas: "Other lenders may lend to agriculture and rural America only when it is profitable to do so, but at Farm Credit, financing rural America is all we do. When Congress created the Farm Credit System in 1916, it gave the System a mission to be a competitive, reliable source of funds for eligible borrowers in agriculture and rural America. Because we specialize in these areas, we have expertise that is unparalleled among other lenders." *http://www.farmcreditbank.com/farm-credit-advantage.aspx*; *See also* CoBank 2011 Annual Report, 31 ("We are a mission-based lender with authority to make loans and provide related financial services to eligible borrowers in the agribusiness and rural utility industries, and to certain related entities, as defined by the Farm Credit Act. . . . We are cooperatively owned by our U.S. customers.").

[54] To receive treatment as cooperatives under the Internal Revenue Code, an entity must be "operating on a cooperative basis." 26 U.S.C. 1381(a). The United States Tax Court has held that one of the guiding principles for determining whether an entity is operating on a cooperative basis is if it is democratically controlled by the members. *Puget Sound Plywood, Inc.* v. *Commissioner*, 44 T.C. 305, 308 (1965).

[55] *See, e.g.*, 12 U.S.C. 2072, 92 (requiring boards for production credit associations and federal land bank associations be selected from its voting members); 12 CFR 701 app. A (bylaws for national credit unions requiring board members be members of the credit union); Kan. Stat. Ann. § 17–1510 (West) (requiring board members to be selected from the membership); Va. Code Ann. § 13.1–324 (West) (requiring the board, except for the public director, consist of members).

[56] *See, e.g.*, the initial statement of Congress in the Farm Credit System Act, which authorizes the Farm Credit System that the FCS cooperatives are a part of: "It is the objective of this chapter to continue to encourage farmer- and rancher-borrowers participation in the management, control, and ownership of a permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit, and to modernize and improve the authorizations and means for furnishing such credit and credit for housing in rural areas made available through the institutions constituting the Farm Credit System as herein provided." 12 U.S.C. 2001.

innovation realized must be of a certain size. Innovation often begins on a small scale before becoming widely accepted and implemented, if successful. Regarding whether the FHL Banks should be included because the exemption would also provide innovation through the FHL Banks, as described in detail above in section III.B of this final release, the Commission determined to carefully narrow the cooperatives that can elect the exemption to those whose members consist exclusively of entities that (or other cooperatives whose members) do qualify for the end-user exception on their own, given the clear Congressional intent in section 2(h)(7) of the CEA to exclude financial entities (the definition of which excludes small financial institutions) from the end-user exception to the clearing requirement. Given that FHL Banks are not made up exclusively of non-financial entities or small financial institutions, the cooperative exemption would not be available to them.

The ABA and ICBA also commented that the cooperative exemption does not qualify under section 4(c) and is discriminatory because it would give cooperatives a competitive advantage over banks and therefore it does not promote "fair competition." They also commented that cooperatives compete with banks for the same business opportunities, and as GSEs and tax-exempt entities, cooperatives can offer more competitive pricing than traditional banks. Lake City Bank commented that it has difficulty competing with the FCS and credit unions for business due to the GSE status of the FCS, the large amount of assets the FCS maintains, and the favorable tax status afforded to the FCS and credit unions.

In contrast, the FCC commented that the cooperative exemption preserves a "level field for FCS institutions and commercial banks" that qualify for the end-user exception because FCS associations that otherwise would qualify as small financial institutions and compete with qualifying banks hedge risk at the level of the FCS bank cooperatives in which they are members. In effect, the FCC asserts that the FCS associations would be unable to use the end-user exception because the cooperative structure of the FCS system means that the associations act through the FCS bank cooperatives (all of which have total assets over $10 billion) for their hedging activities and not directly.

As discussed previously, the essential function of cooperatives is to enable their members to access markets through a commonly-owned intermediary. The memberships of the cooperatives that would qualify for the cooperative exemption consist of entities that can elect the end-user exception if acting on their own or other cooperatives the members of which can elect the end-user exception. However, these cooperatives meet the definition of "financial entity" and are too large to qualify for the small financial institution exemption, which, in turn, renders the end-user exception unavailable to the cooperatives. Accordingly, if the cooperative members wish to access the markets through their financial cooperative, which has been established for that same purpose, they would not receive the full benefits of the end-user exception because the cooperative would have to clear its swaps even though it is acting in the interests of its members in the markets. On the other hand, the members could enter into loans and swaps with other financial entities that can elect the end-user exception. In effect, the cooperative structure, which is intended to give the members the benefit of size by allowing them to pool their resources and act together for their mutual benefit, instead would frustrate their ability to realize the full benefits of the end-user exception when acting through their cooperatives. As such, the cooperative exemption seeks to preserve the benefits available to the members of cooperatives as intended under the cooperative legal structure.

The Commission's recognition that the cooperatives provide a means for its members to access the financial markets in a variety of ways is consistent with the intent of Congress and state legislatures in the laws establishing cooperative legal structures. As described below, some of these laws acknowledge that cooperatives may have certain benefits or advantages that other entities do not have, but that any such advantages are acceptable for promoting the benefits of cooperatives because ultimately the benefits inure to the members of the cooperatives. The cooperative exemption is being adopted by the Commission in the context of the foregoing policy determinations.[57]

Importantly, the Commission notes that the swaps that are the subject of the exemption are limited to those swaps related to member loans. Accordingly, the exemption applies only to the swaps related to lending services that financial cooperatives have been established to provide, and traditionally do provide, to their owner-members.[58]

The ABA and ICBA also cited to "preferred tax and funding advantages as [GSEs]" for FCS banks and the tax-exempt status that qualifying cooperatives have under Subchapter T of the Federal Internal Revenue Code ("Tax Code") as existing advantages cooperatives have over banks. On the other hand, financial cooperatives, such as the FCS and credit unions, are subject to other legal restrictions and regulated by their own regulators, who may impose restrictions that put them at a competitive disadvantage when compared to banks. For example, federal statutes and regulations applicable to FCS cooperatives restrict lending services to particular classes of borrowers, prohibit them from taking deposits (which limits their funding sources as compared to banks), and

[57] As an example of these legislative policy determinations, the Federal Credit Union Act states:

The Congress finds the following:

(1) The American credit union movement began as a cooperative effort to serve the productive and provident credit needs of individuals of modest means.

(2) Credit unions continue to fulfill this public purpose, and current members and membership groups should not face divestiture from the financial services institution of their choice as a result of recent court action.

(3) To promote thrift and credit extension, a meaningful affinity and bond among members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities, or the maintenance of an otherwise well understood sense of cohesion or identity is essential to the fulfillment of the public mission of credit unions.

(4) Credit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes because they are member-owned, democratically operated, not-for-profit organizations generally managed by volunteer boards of directors and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.

(5) Improved credit union safety and soundness provisions will enhance the public benefit that citizens receive from these cooperative financial services institutions.

12 U.S.C. 1751. State cooperative laws also acknowledge the different status cooperatives are being provided within the competitive landscape. See N.Y. Coop. Corp. Law, which states that: "[a] cooperative corporation shall be classed as a non-profit corporation, since its primary object is not to make profits for itself as such, or to pay dividends on invested capital, but to provide service and means whereby its *members may have the economic advantage of cooperative action,* including a reasonable and fair return for their product and service." N.Y. Coop. Corp. Law 3 (McKinney) (emphasis added); *see also* Ky. Rev. Stat. Ann. § 272.1001(2) (West 2012).

[58] For example, with respect to the FCS, the Farm Credit Act of 1971 provides, "It is declared to be the policy of the Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations." 12 U.S.C. 2001.

limit other services that they can provide to members. Similarly, the Tax Code, U.S. Tax Court rulings, and other guidance from the Internal Revenue Service impose limits on the business structure of cooperatives that seek cooperative tax treatment under the Tax Code that may impact their competitiveness. Also, cooperatives generally cannot raise equity capital from independent, non-customer investors. While the Commission's role is not to determine the relative overall competitive advantages or disadvantages that cooperatives or other financial institutions may have, the Commission believes that any limited advantage the cooperative exemption may provide to exempt cooperatives is likely to be small when viewed in the context of the complete competitive landscape in which financial cooperatives and banks operate.

Given that § 39.6(f) (now § 50.51) and its attendant terms and conditions would (1) promote economic and financial innovation for the benefit of the members of exempt cooperatives, (2) foster the ability of cooperative members to access the financial markets through their cooperatives and (3) further Congressional intent by providing a limited exemption from clearing that effectively extends the end-user exception to cooperatives that have end users for members, the Commission concludes that the adoption of § 39.6(f) (now § 50.51) and its attendant terms and conditions would promote responsible economic and financial innovation and fair competition in accordance with section 4(c) of the CEA.

The Commission also concludes that the cooperative exemption will be limited to entities that fall within the term "appropriate person," as required by section 4(c)(2)(B)(i) of the CEA.[59] Section 2(e) of the CEA renders it "unlawful for any person, other than an [eligible contract participant ("ECP")], to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market."[60] Since the cooperative exemption can only be elected for swaps that are executed bilaterally and not on a board of trade or contract market, both the exempt cooperatives and their respective counterparties to such swaps must be ECPs. Given that the criteria for the ECP definition covering business organizations generally is more restrictive than the comparable criteria for the appropriate person definition in section 4(c)(3),[61] the Commission finds that the class of persons relying on § 50.51(a) will be limited to appropriate persons for purposes of CEA section 4(c)(2)(B)(i).[62]

Furthermore, the Commission concludes that the cooperative exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge their respective regulatory duties under the CEA as provided in section 4(c)(2)(B)(ii) of the CEA. The cooperative exemption effectively extends the end-user exception established in section 2(h)(7) of the CEA to cooperatives acting for non-financial entities. Section 39.6(f)(3) (now § 50.51(c)) has the same reporting requirement that the end-user exception has with the only difference being that the reporting party must report that the cooperative exemption has been elected for the swap being reported instead of the end-user exception. In this way, the Commission will be able to track the swaps for which the cooperative exemption is being elected and who is electing the exemption thereby allowing the Commission to oversee the use of the cooperative exemption in the same manner as the end-user exception. Regarding contract markets and derivatives transaction execution facilities, the cooperative exemption does not modify their regulatory duties under the CEA. Accordingly, those entities will not have any increase or reduction in their regulatory duties with regard to the exempted swaps.

V. Administrative Procedure Act Related Comments

The ABA and the ICBA submitted a number of comments asserting that the rule is discriminatory or violates the arbitrary and capricious standard in the APA.[63] The ABA commented that the Commission did not provide a reasonable explanation for why cooperatives with over $10 billion in total assets were given an exemption while banks with total assets over $10 billion were not. According to the ABA, the Commission did not take into account the Congressional intent not to exempt banks and cooperatives with total assets above $10 billion from mandatory clearing.

The Commission disagrees with the commenters' assertion that the Commission did not provide a reasonable explanation for the rule or that it does not fulfill Congressional intent. As discussed throughout the NPRM and as reiterated in this final release in response to specific comments, the cooperative exemption fulfills Congressional intent as expressed in section 2(h)(7) of the CEA by providing the full benefits of the end-user exception to the end-user members of cooperatives who act in the markets through their cooperatives. The limitation on the definition of "exempt cooperative" to those cooperatives whose members consist exclusively of entities and persons who may elect the end-user exception and other cooperatives whose members meet that requirement makes that readily apparent and is explained in detail in the NPRM.[64] Furthermore, the Commission considered both this element of Congressional intent and Congress' clear mandate that the Commission require that certain swaps entered into by financial institutions be cleared by carefully and purposefully limiting the types of swaps for which the cooperative exemption is available.[65] The Commission's reasoning behind the cooperative exemption based on the unique member-owner structure of cooperatives and the nature of cooperatives as entities whose primary purpose is to act in the interests of their member-owners in the financial marketplace is thoroughly discussed throughout the NPRM and reiterated in this final release. Commenters' assertions that the cooperative exemption rule is inconsistent with Congressional intent or is arbitrary and capricious are therefore without merit.

[59] 7 U.S.C. 6(c)(2)(B)(i).

[60] 7 U.S.C. 2(e).

[61] Compare CEA section 4(c)(3)(F) identifying the applicable type of appropriate person (a "corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000 . . ." and section 1a(18)(A)(v) that identifies a comparable type of ECP (a "corporation, partnership, proprietorship, organization, trust, or other entity" with a net worth exceeding $1,000,000 (and that enters into an agreement, contract or transaction for certain risk management purposes) or total assets exceeding $10,000,000).

[62] Although § 39.6(f) (now § 50.51) is an exemption from the clearing requirement of section 2(h)(1)(A) of the CEA and section 2(e) of the CEA sets forth a standard for entering into a swap, section 4(c)(2)(B)(i) requires that any agreement, contract or transaction that is the subject of a CEA section 4(c)(1) exemption be "entered into" solely between appropriate persons. Therefore, focusing on section 2(e), which is an execution standard rather than a clearing standard, is appropriate, particularly given that if it is unlawful to enter into a swap in the first instance, the clearing requirement is moot.

[63] *See* 5 U.S.C. 706(2)(A).

[64] 77 FR 41942 and 41943, and section III.B above.

[65] 77 FR 41942 and 41943, and section III.C above.

VI. Consideration of Costs and Benefits

A. Background

In the wake of the financial crisis of 2008, Congress adopted the Dodd-Frank Act, which, among other things, requires the Commission to determine whether a particular swap, or group, category, type or class of swaps, shall be required to be cleared.[66] Specifically, section 723(a)(3) of the Dodd-Frank Act amended section 2(h)(1)(A) of the CEA to make it "unlawful for any person to engage in a swap unless that person submits such swap for clearing to a [DCO] that is registered under the CEA or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared." This clearing requirement is designed to reduce counterparty risk associated with swaps and, in turn, mitigate the potential systemic impact of such risk and reduce the likelihood for swaps to cause or exacerbate instability in the financial system.[67]

Notwithstanding the benefits of clearing, section 2(h)(7) of the CEA provides the end-user exception if one of the swap counterparties: "(i) is not a financial entity; (ii) is using swaps to hedge or mitigate commercial risk; and (iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps." Section 2(h)(7)(C)(ii) of the CEA directs the Commission to consider making the end-user exception available to small banks, savings associations, credit unions, and farm credit institutions, including those institutions with total assets of $10 billion or less, through an exemption from the definition of "financial entity."[68] In § 39.6(d) (now § 50.50(d)), the Commission established the small financial institution exemption from the definition of "financial entity" for these institutions. The small financial institution exemption largely adopted the language of section 2(h)(7)(C)(ii) providing for an exemption for the institutions identified in section 2(h)(7)(C)(ii) that have total assets of $10 billion or less.

On December 23, 2010, the Commission published for public comment an NPRM for § 39.6 (now § 50.50) proposing the end-user exception.[69] As discussed in section I hereof, several parties that commented on the end-user exception NPRM recommended that the Commission provide extend the end-user exception to cooperatives. These commenters reasoned [70] that the member ownership structure of cooperatives and the fact that they act in the interests of members that are non-financial entities justified an extension of the end-user exception to the cooperatives. In effect, the commenters posited that because a cooperative effectively acts as an intermediary for its members when facing the larger financial markets with its interests being effectively the same as its members' interests, the end-user exception that would be available to a cooperative's members should also be available to the cooperative. If the members themselves could elect the end-user exception, then, according to the commenters, the Commission should permit the cooperatives to do so as well.

The Commission is adopting the cooperative exemption herein as described in this release. Through § 39.6(f) (now § 50.51), the Commission uses the authority provided in section 4(c) of the CEA to permit "exempt cooperatives," as defined in § 39.6(f)(1) (now § 50.51(a)) to elect not to clear certain swaps that are otherwise required to be cleared pursuant to section 2(h)(1)(A) of the CEA. In effect, the cooperative exemption makes available to exempt cooperatives the end-user exception that is available to their members, as described in greater detail above.[71] It is the costs and benefits of this exemption that the Commission considered in the discussion that follows.

B. Statutory Requirement To Consider the Costs and Benefits of the Commission's Action: CEA Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission considers the costs and benefits resulting from its own discretionary determinations with respect to the section 15(a) factors.

Absent this rulemaking, all cooperatives that are financial entities as defined in section 2(h)(7)(C)(i) of the CEA and which are not otherwise exempt from that definition would be subject to the clearing requirement under section 2(h)(7)(A)(i) of the CEA. Thus, the scenario against which this rulemaking's costs and benefits are considered is cooperatives within the definition of financial entity in Section 2(h)(7)(C)(i) with assets exceeding $10 billion, which remain subject to the clearing requirement of section 2(h)(1)(A) of the CEA. Additionally, the Commission considers the rulemaking's costs and benefits relative to alternatives considered by the Commission.

As discussed in more detail below, the Commission is able to estimate certain reporting costs. The dollar estimates are offered as ranges with upper and lower bounds, which is necessary to accommodate the uncertainty that surrounds them. The discussion below considers the rule's costs and benefits as well as alternatives to the rule. The discussion concludes with a consideration of the rule's costs and benefits in light of the five factors specified in section 15(a) of the CEA.

C. Costs and Benefits of the Final Rule

1. Costs and Benefits to Electing Cooperatives and Their Members

Providing an exemption from required clearing to cooperatives that meet the criteria described in the final rule will benefit them and their members in that they will not have to bear the costs of

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[66] *See* section 2(h)(2) of the CEA, 7 U.S.C. 2(h)(2).

[67] When a bilateral swap is moved into clearing, the DCO becomes the counterparty to each of the original participants in the swap. This standardizes counterparty risk for the original swap participants in that they each bear the same risk attributable to facing the DCO as counterparty. In addition, DCOs exist for the primary purpose of managing credit exposure from the swaps being cleared and therefore DCOs are effective at mitigating counterparty risk through the use of risk management frameworks. These frameworks model risk and collect defined levels of initial and variation margin from the counterparties that are adjusted for changing market conditions and use guarantee funds and other risk management tools for the purpose of assuring that, in the event of a member default, all other counterparties remain whole. DCOs have demonstrated resilience in the face of past market stress. Most recently, they remained financially sound and effectively settled positions in the midst of turbulent events in 2007–2008 that threatened the financial health and stability of many other types of entities and the financial system as a whole. These, and other benefits of clearing, are explained more fully at: 77 FR 74284.

[68] *See* section 2(h)(7)(C)(ii) of the CEA.

[69] *See* 75 FR 80747.

[70] Other reasons given for providing an exemption from clearing for cooperatives are discussed above in this final rule.

[71] Exempt cooperatives can be financial entities that do not qualify for the small financial institution exemption because their assets exceed $10 billion. As provided in § 39.6(f)(2) (now § 50.51(b)) of the rule, an exempt cooperative would not be required to clear swaps with members in connection with originating member loans, or swaps used by the exempt cooperative to hedge or mitigate commercial risk arising in connection with such swaps with members or loans to members.

clearing that they would otherwise incur. Without the cooperative exemption rule, cooperatives meeting the criteria of the exemption would have to clear swaps pursuant to section 2(h)(1)(A) of the CEA when they are either: (1) Entering into a swap with a member that is subject to required clearing, or (2) transacting with another financial entity to hedge or mitigate risk related to loans with members or swaps with members related to such loans. Required clearing would introduce additional costs for cooperatives, including fees associated with clearing as well as costs associated with margin and capital requirements.

Regarding fees, DCOs typically charge Futures Commission Merchants ("FCMs") an initial transaction fee for each of the FCM customers' swaps that are cleared, as well as an annual maintenance fee for each of their customers' open positions.[72] As a result, cooperatives eligible for the exemption will bear lower costs related to swaps and would likely pass along these costs savings to their members either by providing swaps at more attractive rates or through larger patronage distributions or allocations.[73]

The ABA questioned whether the exemption would have benefits that accrue to members of exempt cooperatives. The ABA stated that in the absence of the proposed exemption, cooperative members can still exempt their swaps from clearing. Therefore, the ABA believes that "the proposed clearing exemption would solely benefit cooperatives larger than $10 billion."

The Commission, however, anticipates that benefits will accrue to members of exempt cooperatives. Generally, as discussed in section IV, the mission of the cooperatives is to provide loans and other financial services to particular types of borrowers and the cooperatives operate for the mutual benefit of their respective members. As such, in keeping with its mission and purpose, a cooperative is likely to elect the exemption only if the election thereof benefits its members. As discussed further in this section VI, the exemption is likely to lower operational costs for exempt cooperatives and to reduce their margin requirements. As a consequence, exempt cooperatives will be able to provide lower-cost funding to their members, to retain more member allocable capital, or to pay out higher patronage distributions to their members. Ultimately, the members, as owners of the cooperatives, will benefit.

Regarding margin requirements, by allowing cooperatives to exempt certain swaps from clearing, the final rule may reduce the amount of margin that exempt cooperatives and their counterparties are required to post for swaps used to hedge or mitigate risk associated with loans to eligible members and for swaps related to those loans.[74] Reduced margin requirements will reduce the amount of capital that exempt cooperatives must allocate to margin, which will increase the amount of capital that exempt cooperatives may distribute or allocate to members. On the other hand, to the extent that the exemption results in exempt cooperatives and their counterparties holding less margin against exempt swap positions, each will be exposed to greater counterparty risk.

The final rule may also affect the capital that cooperatives that are financial entities are required to hold with respect to their swap positions pursuant to prudential regulatory capital requirements. As stated above, when compared to a situation in which the cooperative exemption is not available, the cooperative exemption will reduce the number of swaps that exempt cooperatives are required to clear. The Commission anticipates that reducing the number of swaps that such cooperatives clear may impact the amount of capital that exempt cooperatives are required to hold. This creates both benefits and costs. If reduced clearing lowers the amount of capital that exempt cooperatives must hold, that would increase the cooperative's lending capacity, enabling them to lend more to their members without retaining or raising additional capital. As for costs, this allows exempt cooperatives to become more highly leveraged, which increases the counterparty risk that they pose to their members and other market participants with whom they transact. On the other hand, if reduced clearing increases the amount of capital that exempt cooperatives must hold, that would have the opposite effect.

Cooperatives that elect the exemption will be required to report, or to cause to be reported, additional information to an SDR or to the Commission, which will create incremental costs for the reporting party. The final rule requires that exempt cooperatives adhere to the reporting requirements of § 50.50(b). For each swap where the exemption is elected, either the exempt cooperative or its counterparty (likely if the counterparty is an SD or MSP) must report: (1) That the election of the exemption is being made; (2) which party is the electing counterparty; and (3) certain information specific to the electing counterparty unless that information has already been provided by the electing counterparty through an annual filing.[75] In addition, for entities that are registered with the SEC, the reporting party will also be required to report with respect to the electing counterparty: (1) The SEC filer's central index key number; and (2) that an appropriate committee of the board of directors has approved the decision for that entity to enter into swaps that are exempt from the requirements of sections 2(h)(1) and 2(h)(8) of the Act.

For each exempted swap, to comply with the swap-by-swap reporting requirements in §§ 50.50(b)(1)(i) and (ii), the reporting counterparty will be required to check one box indicating the exemption is being elected and complete one field identifying the electing counterparty. The Commission expects that this information will be entered into the appropriate reporting system concurrently with additional information that is required by the CEA and part 45 of the Commission's regulations. Furthermore, the Commission estimates that there will be approximately 500 swaps per year that are exempted from clearing pursuant to this rule.[76] Therefore, each reporting

[72] For example, not including customer-specific and volume discounts, the transaction fees for interest rate swaps at CME range from $1 to $24 per million notional amount and the maintenance fees are $2 per year per million notional amount for open positions. LCH transaction fees for interest rate swaps range from $1 to $20 per million notional amount, and the maintenance fee ranges from $5 to $20 per swap per month, depending on the number of outstanding swap positions that an entity has with the DCO. *See* LCH pricing for clearing services related to OTC interest rate swaps at: *http://www.lchclearnet.com/swaps/swapclear_for_clearing_members/fees.asp.*

[73] The CUNA stated that the exemption "would help minimize the additional costs and fees associated with mandatory clearing."

[74] The Commission notes that regulations addressing margin and capital requirements for non-cleared swaps have not yet been finalized. Accordingly, the Commission cannot determine, quantify, or estimate what margin, if any, may be required for the swaps exempted from clearing under the cooperative exemption.

[75] The third set of information comprises data that is likely to remain relatively constant and therefore, does not require swap-by-swap reporting and can be reported less frequently.

[76] A review of information provided for five cooperatives that likely would be exempt cooperatives showed a range of swap usage from none to as many as approximately 200 swaps a year with most entering into less than 50 swaps a year. Using the high end of reported swaps for the five cooperatives for which information was available, an estimate of 50 swaps per year was calculated. The Commission believes this estimate is high because some of the reported swaps may not meet the requirements of the final rule and, based on discussions with other regulators, several cooperatives for which detailed information was not available to the Commission likely undertake little, if any, swap activity. However, for purposes of the cost calculations, the Commission assumes

counterparty is likely to spend 15 seconds to 2 minutes per transaction in incremental time entering the swap-by-swap information into the reporting system, or in the aggregate, 1.5 hours to 17 hours per year for all 500 estimated swaps. A financial analyst's average salary is $208/hour, which corresponds to approximately $1–$7 per transaction or in aggregate, $300–$3,500 per year for all 500 estimated swaps.[77] While the above information must be reported on a swap-by-swap basis, some information may be reported annually. Regulation § 50.50(b)(1)(iii) allows for certain counterparty specific information identified therein to be reported either swap-by-swap by the reporting counterparty or annually by the electing counterparty. When exempt cooperatives enter into exempt swaps with members, the cooperative is likely to be the reporting counterparty. Furthermore, assuming the cooperative is the reporting counterparty, the time burden for the first swap entered into by an exempt cooperative in collecting and reporting the information required by § 50.50(b)(1)(iii) will be approximately the same as the time burden for collecting and reporting the information for the annual filing. Given the cost equivalence for annual reporting to reporting a single swap if the exempt cooperative is both the electing and reporting counterparty, the Commission assumes that all ten exempt cooperatives will make an annual filing of the information required for § 50.50(b)(1)(iii). The Commission estimates that it will take an average of 30 minutes to 90 minutes to complete and submit the annual filing. The average hourly wage for a compliance attorney is $300, which means that the annual per cooperative cost for the filing is likely to be between $150 and $450. If all ten exempt cooperatives were to undertake an annual filing, the aggregate cost would be $1,500 to $4,500.[78]

Furthermore, when an exempt cooperative is not functioning as the reporting counterparty (*i.e.*, when transacting with a SD or MSP), it may, at certain times, need to communicate information to its reporting counterparties in order to facilitate reporting. That information may include, among other things, whether the electing counterparty has filed an annual report pursuant to § 50.50(b) and information to facilitate any due diligence that the reporting counterparty may conduct. These costs will likely vary substantially depending on the number of different reporting counterparties with whom an electing counterparty conducts transactions, how frequently the electing counterparty enters into swaps, whether the electing counterparty undertakes an annual filing, and the due diligence that the reporting counterparty chooses to conduct. The Commission estimates that non-reporting electing counterparties will incur between 5 minutes and 10 hours of annual burden hours, or in the aggregate, between approximately 1 hour and 100 hours. The hourly wage for a compliance attorney is $300, which means that the annual aggregate cost for communicating information to the reporting counterparty is likely to be between $300 and $30,000. Given the unknowns associated with this cost estimate noted above, the Commission does not believe this wide range can be narrowed without further information.[79]

The ABA and the ICBA suggested that the Commission's assumption that each potentially exempt cooperative engages in 50 swaps a year does not take into account the fact that the number of swaps entered into by the exempt cooperatives may change or increase over time. The ABA also commented that the Commission underestimated the number of cooperatives eligible and assumes that the number of cooperatives would not increase by either reorganization or growth.

The Commission contacted the FCA and National Credit Union Administration for further assistance in assessing whether the estimates used in the NPRM are reasonable. These regulators discussed generally the observed level of swap activity of the cooperatives they regulate. Based on these discussions, the Commission concluded that the estimates in the NPRM are reasonable and appropriate for this rulemaking. The Commission recognizes that the number of entities eligible for the exemption and the number of swaps per eligible cooperative is likely to change in the future and that the benefits of this exemption for exempt cooperatives could encourage the number or size of exempt cooperatives and of swaps used by those cooperatives to grow. However, the Commission notes that the extent to which such growth is realized also depends on several additional factors that the Commission does not have adequate information to evaluate, including: (1) Subsequent changes to laws or regulations affecting one or more types of cooperatives; (2) increases or decreases in the size of the industries served by those cooperatives; and (3) the frequency with which exempt cooperatives make loans or experience other changes that require rebalancing of their hedging strategies. Because the Commission does not have sufficient information to estimate the direction or magnitude of the effect that these forces will have on the number of exempt cooperatives and exempt swaps per cooperative, it is not possible to evaluate how future changes in either are likely to affect the costs or benefits related to the exemption.

2. Costs and Benefits for Counterparties to Electing Cooperatives

The benefits of the exemption for counterparties to electing exempt cooperatives differ depending on whether they are members of the cooperatives. For entities that are members of the electing cooperative, they will likely benefit from the reduced operational costs the exempt cooperative achieves through reduced clearing fees associated with the cooperative's swaps with the market. The benefit may be passed on in the form of better terms on swaps between members and the cooperative and through the cooperative's patronage distributions to members. For entities that are not members of the cooperative (i.e. market makers entering into swaps with the cooperative), the benefits are different. Market makers entering into swaps with cooperatives that are subject to the exemption do not participate in the pro rata patronage distributions, but may benefit from reduced clearing costs associated with non-cleared swaps.

Reduced clearing of swaps by exempt cooperatives will increase counterparty risk for both exempt cooperatives and their counterparties. Cooperatives will be more exposed to the credit risk of their counterparties, and conversely, the cooperatives' counterparties will be more exposed to the credit risk of the exempt cooperatives. This could be

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that each of the 10 potential exempt cooperatives will enter into 50 swaps each year. Accordingly, it is estimated that exempt cooperatives may elect the cooperative exemption for 500 swaps each year.

[77] Wage estimates are taken from the SIFMA "Report on Management and Professional Earnings in the Securities Industry 2011." Hourly wages are calculated assuming 1,800 hours per year and a multiplier of 5.35 to account for overhead and bonuses. In light of the challenges of developing precise estimates, the results of calculations have been rounded.

[78] The average wage for a compliance attorney is $300.95 [($112,505 per year)/(2,000 hours per year) * 5.35 = $300.95]. For the purposes of the Cost Benefit Considerations section, the Commission has used wage estimates that are taken from the SIFMA "Report on Management and Professional Earnings in the Securities Industry 2011" because industry participants are likely to be more familiar with them. Hourly costs are calculated assuming 2,000 hours per year and a multiplier of 5.35 to account for overhead and bonuses. All totals calculated on the basis of cost estimates are rounded to two significant digits.

[79] As noted above, the average wage for a compliance attorney is $300.95 per hour [($112,505 per year)/(2,000 hours per year) * 5.35 = $300.95].

problematic for an exempt cooperative if one of the dealers with which the cooperative has large non-cleared positions defaults, or if groups of members whose financial strength may be highly correlated and whose aggregate non-cleared positions with the cooperative are large, encounter financial challenges. In this way, the credit risk of one of the cooperative's counterparties could adversely impact the other counterparties of that cooperative.

Conversely, if an exempt cooperative becomes insolvent and its positions with a SD or MSP are substantial, it is possible that its non-cleared positions could be large enough to exacerbate instability at the SD or MSP or could create greater risk exposure for the members with which the cooperative entered into swaps.

The FCC stated that because FCS institutions have collateral agreements in place, "clearing offers very little additional protection to FCS institutions." The Commission acknowledges that counterparty risk can be mitigated through collateral arrangements, but also notes that the extent to which counterparty risk is reduced through collateral agreements depends on the amount of collateral required from each party to the swap, the liquidity of that collateral in stressed market conditions, the frequency with which the amount of collateral is adjusted to account for variations in the value of the swap or the collateral, and the ability of the non-defaulting party to claim the collateral quickly in the event that their counterparty defaults.[80] The Commission does not have adequate information to determine how effectively collateral arrangements may mitigate counterparty risk born by exempt cooperatives and their counterparties in the absence of central clearing.

3. Costs and Benefits for Other Market Participants

The ABA commented that the Commission did not consider competitive harm to banks when analyzing the costs and benefits of the cooperative exemption. The ABA and ICBA commented that cooperatives compete with banks for the same business opportunities and provide similar services. They further stated that the exemption would provide cooperatives with a competitive advantage because they "would have more liquidity available for lending than comparable banks would and be able to provide lower cost funding." Further, the ABA stated that "the competitive impact of the proposed exemption would grow as more cooperatives increase their swaps portfolios to take advantage of the pricing and other economic benefits it affords."

The Commission recognizes that the cooperative exemption may provide clearing cost savings related benefits to eligible cooperatives with assets in excess of $10 billion.[81] However, in assessing the competitive costs and benefits of the cooperative exemption the Commission believes the policy considerations for establishing cooperatives also need to be taken into account. As described section IV, Congress and the states have established the cooperative legal structure distinct from other corporate forms to facilitate the economic advantage of cooperative action for the mutual benefit of a cooperative's members. The cooperative exemption provides the members with the benefits of the end-user exception, both directly and indirectly through their cooperatives, without having to switch from doing business with their existing cooperatives to doing business with small financial institutions or other entities that can elect to exempt their swaps from clearing, but which are not organized for the specific purpose of benefitting those members. The cooperative exemption furthers these benefits by recognizing that the cooperatives were established to act on behalf of their members in the marketplace and providing an exemption from clearing to eligible cooperatives. In effect, the cooperative exemption ensures that the existing members of exempt cooperatives can achieve the full benefits of both cooperative action and of the end-user exception.

4. Costs and Benefits to the Public

The public generally has an interest in mandatory clearing because of its potential to reduce counterparty risk among large, interconnected institutions, and to facilitate rapid resolution of outstanding positions held by such institutions in the event of their default. By narrowly crafting the proposed cooperative exemption to incorporate qualifying criteria limiting both the types of institutions and the types of swaps that are eligible, the Commission has sought to conserve this public interest.

The ABA and the ICBA commented that the four FCS banks and FCS lending associations are jointly and severally liable for one another, and that "the aggregated asset size of these institutions is $230 billion and growing rapidly." The ICBA also stated that the financial cooperatives affected by the exemption will grow larger over time and may present a systemic risk in the future. The ABA stated that because the FCS is a GSE, it is a potential liability to U.S. taxpayers. The CUNA, on the other hand, asserted that the exemption would not have significant impact on the overall swap market because of the small number of entities eligible for the exemption. Similarly, the FCC stated that because of collateral agreements that FCS institutions have in place that "the FCS poses no systemic risk to the U.S. financial system."

The Commission acknowledges that the magnitude of risk and potential costs to the public created by an exemption from clearing depends on several factors including: The number and size of the exempt cooperatives electing the exemption; the size, number, and type of exempt swaps held by each institution; the risks inherent in their outstanding swaps; the concentration of swaps with individual counterparties; the financial strength of counterparties to exempt swaps; and the presence of collateral agreements related to the exempt swaps.[82] The Commission has limited data with which to evaluate these factors. Commenters provided limited data, noting the size of the four farm credit banks[83] and the number and size of certain credit unions with more than $10 billion in assets.[84] However, commenters did not provide, and the Commission does not have, detailed data regarding the size of exempt cooperatives' non-cleared swaps, information regarding the concentration

[80] The 2012 ISDA Margin Survey indicates that 71% of all OTC derivatives transactions were subject to collateral agreements during 2011, but notes that the degree of collateralization may vary significantly depending on the type of derivative and counterparties entering into a transaction.

[81] The Commission notes, however, that most small banks are also eligible for the end-user exception, which can be elected for a wider range of swaps than the cooperative exemption. Section 50.50(d) of the Commission's regulations provides that banks, FCS institutions, and credit unions that have total assets of $10 billion or less are eligible for the end-user exception with certain exceptions—primarily that they not be SDs or MSPs.

[82] As noted above, the ability of collateral agreements to mitigate counterparty risk and risk to the public depends on the details of those agreements with regard to the amount and quality of collateral required, the frequency with which it is adjusted to reflect changing valuations, and the speed with which the non-defaulting party can claim the collateral in the event that their counterparty defaults.

[83] ABA stated that the four Farm Credit banks have approximately $15 billion, $29 billion, $76 billion, and $90 billion in assets.

[84] ABA stated that there are four credit unions with more than $10 billion in assets and are likely to be several more within the next year. They also stated that one credit union has nearly $50 billion in assets and another has more than $25 billion.

of non-cleared positions with particular counterparties, or information regarding the financial strength of those counterparties. In addition, while commenters noted the potential for collateral agreements to mitigate counterparty risk in the absence of clearing, they did not provide data or additional information regarding the agreements that they anticipate will be used. Each of these factors could have a significant bearing on how much risk is created for the public by exempting eligible counterparties from the clearing requirement.

Notwithstanding the limited data available, the Commission considered the potential risks that could arise from cooperatives entering into non-cleared swaps and the Commission believes it has mitigated these risks with the conditions imposed in the rule that limit the number of entities and types of swaps eligible for the cooperative exemption. These conditions are described in sections I, II and II above.

In addition, the Commission notes that cooperatives that may qualify as exempt cooperatives are supervised by other regulators that have access to more detailed information regarding the swaps executed by the cooperatives and that are likely to have additional information regarding the risk factors discussed above. These regulators can monitor the use of swaps by these cooperatives and the risk factors related to that swap activity. Using this information, these regulators can assess the risks related to the non-cleared swaps in the context of the overall regulatory framework applicable to the cooperatives and the changing financial condition of the cooperatives and in that context address the potential systemic risk with the cooperatives using their regulatory authority.

Finally, while it is important to consider the potential risks noted above, it is also important to assess the benefits provided by the cooperative exemption. The Commission believes ensuring that the members of exempt cooperatives can continue to use their cooperatives in the manner intended and also realize the full benefits of the end-user exception through their cooperatives is appropriate given the unique nature of cooperatives and the statutory and policy considerations discussed above in section III.

D. Costs and Benefits Compared to Alternatives

There were several alternatives proposed by commenters that the Commission considered including: Providing a "ride along" exemption for community banks larger than $10 billion; and including cooperatives with members that are financial entities, either with or without additional restrictions on the eligibility of swaps conducted by such cooperatives.

The Commission considered a "ride-along" provision, proposed by the ICBA, which would provide a clearing exemption for community banks that exceed the $10 billion total assets threshold. Providing a "ride-along" provision could mitigate the potential competitive effects of the exception, as alleged by the ICBA, but would also increase the potential risk to the public by increasing the number of large financial entities eligible for an exemption from clearing.

Moreover, expanding the exemption in this way could also make it possible for SDs, MSPs, and other large financial institutions to avoid clearing by using exempt community banks as an intermediary for their swap transactions. Finally, allowing non-cooperatives to use the exemption would not reflect the unique structure of cooperatives that is the basis for the exemption and result in an expansion of the small financial institution exemption beyond the parameters detailed in the final release for the Commissions regulations implementing the end-user exception.[85] For these reasons, the Commission has determined not to include the suggested "ride-along" provision.

The ICBA also stated that the cooperative exemption does not include the FHL Banks, and that thousands of small banks that are members of the FHL Bank system will be disadvantaged by the cooperative exemption because the FHL Banks will not be able to provide the same or similar low cost financing to community banks as FCS lenders do for their cooperative associations. The ICBA and the FHL Banks commented that the FHL Banks should be included as exempt cooperatives either generally, or to the extent they provide services to their members that qualify for the small financial institution exemption from the definition of financial entity.

In the NPRM, the Commission considered including cooperatives consisting of members that could not elect the end-user exception, as suggested by the FHL Banks. Such an exemption would assist in ensuring that a greater number of cooperatives are able to elect not to clear swaps. However, as described in greater detail in section III, if the cooperatives elected the exemption when transacting with or for the benefit of members that are not eligible for the end-user exception (i.e. financial institutions with total assets greater than $10 billion) it could significantly increase the number of swaps that are exempt from the clearing requirement and result in exemptions for entities that Congress has not provided any indication should be exempt from the clearing requirement.[86] If the cooperative exemption were expanded in this way, it would reduce the benefits derived from required clearing. By contrast, with the limiting conditions included in the cooperative exemption rule, the Commission is ensuring that the exemption is only available to cooperatives whose members can elect the end-user exception or are themselves cooperatives whose members can elect the end-user exception.[87]

The FHL Banks suggested that this problem could be addressed by limiting the exemption to swaps that hedge risks associated with loans to eligible members. However, allowing new or existing cooperatives with financial entity members to elect not to clear swaps related to activities with members that are eligible for the end-user exception would dilute the benefits that qualifying members achieve through the exemption thereby undermining the purpose for the exemption. For example, as described above in section III, if the FHL Banks elect the cooperative exemption only for swaps related to members who qualify as small financial institutions, the decision not to clear those swaps could create clearing cost savings for the FHL Banks. Those savings would increase the capital that the FHL Banks distribute or allocate to their members as part of the full member pro rata patronage distribution. If larger members hold a large ownership stake in the cooperative, those members would also receive a proportionately large share of the distributions, including a proportionately large share of the savings that result from the cooperative

[85] 77 FR 42559 (Jul. 19, 2012).

[86] Note, for example, that while the FHL Banks have thousands of members that qualify for the small financial institution exemption and who therefor can elect the end-user exception, over one hundred members of the FHL Banks would not qualify because they are financial entities with total assets in excess of $10 billion. These members include some of the largest financial entities in the United States. In addition; as described above in section III, financial entities with assets in excess of $10 billion have borrowed more than half the amount lent by the FHL banks to members.

[87] The Commission notes that banks and other entities that qualify for the small financial institution exemption from the financial entity definition are not excluded under the regulation from being members of exempt cooperatives.

exemption.[88] In other words, members that are eligible for the end-user exception would not receive the full benefits of the exemption that is extended to the cooperative. By contrast, with the limiting conditions included in the cooperative exemption rule, the Commission is ensuring that the exemption is only available to cooperatives whose members could all elect the end-user exception or are themselves cooperatives whose members could elect the end-user exception, and thus the additional pro-rata patronage distributions that an exempt cooperative makes because of the cooperative exemption will only go to such entities.

The FCC requested clarification with respect to the Commission's view on what swaps are "related to" a cooperative's loans to its members, and advocated a broad interpretation. They also stated that "clarification of these items will serve to increase the likelihood that the System's farmer and rancher member borrowers will be able to benefit from this proposed exemption from clearing." The broader interpretation requested by the FCC could increase the number of swaps that are eligible for the exemption by including swaps that serve non-member related purposes, which would further reduce clearing-related costs for eligible cooperatives, but would also increase the counterparty risk that eligible cooperatives and their counterparties bear due to decreased clearing. In the Commission's view, this broader exemption is not justified given the rationale behind the cooperative exemption. As stated above, the term "related to" is intended to include swaps that the exempt cooperatives may enter into with non-members to hedge or mitigate the risks incurred by the cooperatives related to their member lending activities. For example, where cooperatives obtain wholesale funding, only the portion of funding that is not used to make non-member loans may be hedged with exempt swaps.[89] By limiting the eligibility of exempt cooperatives' swaps in this way, the Commission reduces the counterparty risk that exempt cooperatives and their counterparties could experience due to decreased clearing.

[88] *See* section II above for a full discussion of the relative benefits available to different sized members of the FHL Banks.

[89] *See* section III.C above.

E. Section 15(a) Factors

1. Protection of Market Participants and the Public

As described above, if exempt cooperatives elect to exempt certain swaps from required clearing, these cooperatives may not need to pay DCO and FCM clearing fees for clearing those swaps. In addition, the exemption may reduce the amount of capital that exempt cooperatives must allocate to margin accounts with their FCM. This, in turn, provides benefits to the members of exempt cooperatives, that may otherwise absorb such costs as they are passed on by the cooperatives to their members in the form of fees, less desirable spreads on swaps or loans conducted with the cooperative, or lower member allocated capital or patronage distributions.

The exemption will create certain reporting costs for eligible entities. However, as described in the rulemaking for the end-user exception where the specific reporting requirements were addressed, the reporting required uses a simple check-the-box approach and elective annual reporting of certain information that should minimize per swap reporting costs, particularly for cooperatives that enter into multiple swaps.

The exemption is narrowly tailored to exempt only a relatively small number of institutions and to include only swaps that are associated with positions established in connection with originating loans made to customers, or that hedge or mitigate risk arising in connection with such member loans or swaps. These limitations will tend to mitigate the risk to the public that could result from the exemption.

In addition, this exemption is likely to increase counterparty risk for counterparties to exempted swaps as well as for the exempted cooperatives. However, as described above, exempted cooperatives and their counterparties may use collateral agreements with exempted swaps to mitigate counterparty risk.

2. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

While the cooperative exemption would take swaps out of clearing, it mitigates the impact on the financial integrity of the swap markets by limiting the types of entities and swaps that are eligible. As discussed above, the exemption is designed to include only cooperatives that are made up entirely of entities that could elect the end-user exception, and only swaps associated with loans between the cooperative and such members.

The exemption may have competitive effects by allowing the members of exempt cooperatives to achieve additional benefits from the actions of their cooperatives. The Commission believes such benefits are consistent with the intended public interests served by the establishment of cooperative structures as a separate legal form by Congress and the states. The Commission addresses these issues in section IV and VI.C.3. Commenters did not provide, and the Commission does not have, information that is sufficient to quantify the competitive effects that will result from the exemption.

3. Price Discovery

Clearing, in general, encourages better price discovery because it eliminates the importance of counterparty creditworthiness in pricing swaps cleared through a given DCO. That is, by making the counterparty creditworthiness of all swaps of a certain type essentially the same, prices should reflect factors related to the terms of the swap, rather than the idiosyncratic risk posed by the entities trading it.[90] To the extent that the cooperative exemption reduces the number of swaps subject to required clearing, it will lessen the beneficial effects of required clearing for price discovery. However, the Commission anticipates that the number of swaps eligible for this exemption, currently estimated at approximately 500 a year, will be a de minimis fraction of all those that are otherwise required to be cleared. Therefore, the Commission believes that there will not be a material impact on price discovery.

4. Sound Risk Management Practices

To the extent that a swap is removed from clearing, all other things being constant, it is a detriment to a sound risk management regime. To the extent that exempt cooperatives enter into non-cleared swaps on the basis of this rule, it likely increases the exposure of exempt cooperatives and their counterparties to counterparty credit risk. For the public, it increases the risk that financial distress at one or more cooperatives could spread to other financial institutions with which those cooperatives have concentrated positions. However, as discussed above, this additional risk may be reduced by the presence of bilateral margin agreements, which the Commission

[90] *See* Chen, K., et al. "An Analysis of CDS Transactions: Implications for Public Reporting," September 2011, Federal Reserve Bank of New York Staff Reports, at 14.

believes are often used in the absence of clearing.

5. Other Public Interest Considerations

The Commission believes that the cooperative exemption serves the public interest by furthering the public benefits cited by Congress and state legislatures in legislation authorizing cooperative business forms as discussed in section IV above. The cooperative structure allows the members to pool their resources, achieve economies of scale, and realize the benefits of acting in markets through larger entities. However, absent the cooperative exemption, the exempt cooperatives would be unable to elect the end-user exception because the amount of their assets precludes them from qualifying as small financial institutions. In effect, the cooperative structure, which is intended to provide advantages to its member-owners by creating a large entity whose mission is to serve their interests, instead prevents the members from receiving the full benefits of the end-user exception when using their large cooperatives. The cooperative exemption therefor is in the public interest because it resolves a conflict between the small financial institution language of section 2(h)(7) of the CEA and the general policy behind establishing cooperatives of creating large financial institutions with the mission of serving the mutual interests of their member-owners.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities [91] and, if so, provide a regulatory flexibility analysis respecting the impact.[92] Regulation § 39.6(f) (now § 50.51) would affect cooperatives, their members, and potentially the counterparties with whom they trade. These entities could be SDs, MSPs, and eligible contract participants ("ECPs").[93] Regulation § 39.6(f) (now § 50.51) would additionally affect SDRs. As noted in the NPRM, the Commission has previously determined that SDs, MSPs, and SDRs are not small entities for purposes of the RFA.[94]

It is possible that some members of cooperatives may be small entities under the RFA. For these members to be impacted by the cooperative exemption compliance requirements they would have to be entering into swaps with the exempt cooperative and the exemption would need to be elected. In order for two counterparties to a swap to enter into a swap bilaterally, both parties must be ECPs.[95] Based on the definition of ECP in the Commodity Futures Modernization Act of 2000, and the legislative history underlying that definition, the Commission has previously determined that ECPs should not be small entities for purposes of the RFA.[96] The Commission has been made aware in other contexts that some ECPs, specifically those that do not fall within a category of ECP that is subject to a dollar threshold, may be small entities. If there are cooperative members that are both ECPs as defined in the CEA and small entities for purposes of the RFA, the exemption is nevertheless most likely to provide an economic benefit to the cooperative member. Furthermore, if elected, the cooperative exemption would impose the same or similar costs of compliance on members that the previously adopted end-user exception from the clearing requirement imposes. The end-user exception provides effectively the same type of relief from clearing. Accordingly, the cooperative exemption does not create any materially new or different compliance costs than similar regulations that were previously adopted. Finally, the cooperative exemption is elective. If a member that is a small entity wanted to clear its swap, the cooperative exemption does not require them to enter into swaps with their cooperatives and they could execute swaps with other parties that would agree to clearing. Accordingly, the cooperative exemption would not cause any new significant economic impact on these members.

The Chairman, on behalf of the Commission, certified in the NPRM, pursuant to 5 U.S.C. 605(b), that § 39.6(f) (now § 50.51(a)) will not have a significant impact on a substantial number of small entities. The Commission requested comment on this decision in the NPRM.

The ICBA commented that the proposal impacts a substantial number of small community banks because they are members of the FHL banks and the FHL banks are not exempt cooperatives. According to the ICBA, the small bank members of the FHL bank system would be disadvantaged because the FHL banks will not be able to provide the same or similar low cost financing to community banks as FCS lenders will for their cooperatives.

The Commission also received two comments regarding the impact of Regulation § 39.6(f) (now § 50.51(a)) on the competition between banks that are small entities and cooperatives that elect the cooperative exemption. According to the ABA, the Commission's analysis of the economic impact on small entities did not consider that economic impact on the "hundreds of end-user banks that are competing with cooperatives for the same business opportunities." Similarly, the ICBA commented that the "competitive advantages afforded to large credit unions and large FCS funding banks . . . would allow these institutions advantages in competing directly against small community banks even if they have a small financial institution exemption." The ICBA then referenced CoBank as an example of an FCS funding bank with a wide geographic footprint over two dozen states that could grow larger.

The ABA and the ICBA asserted that the Commission is obliged under the RFA to consider the impact of the regulation on small banks, including small banks that are members of the FHL bank system. Specifically, commenters asserted that the Commission should consider the competitive benefit the cooperative exemption might give to exempt cooperatives as compared to small banks that might be small entities for purposes of the RFA both on their own and because small banks are members of the FHL bank system.[97] The Commission has applied the RFA to entities that are cooperatives who may elect the cooperative exemption and their members. Small community banks that are not members of exempt cooperatives are not subject to the cooperative exemption. The Commission also notes that, as discussed above, to the extent a small

[91] The Small Business Administration identifies (by North American Industry Classification System codes) a small business size standard of $7 million or less in annual receipts for Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities. 13 CFR parts 1, 121.201.

[92] 5 U.S.C. 601 et seq.

[93] It is possible that a cooperative or members thereof may not be ECPs. However, pursuant to Section 2(e) of the CEA, if a counterparty to a swap is not an ECP, then such swap must be entered into on, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the CEA. All such swaps must be cleared by the board of trade. *See* section 5(d)(11) of the CEA, 7 U.S.C. 7(d)(11). In effect all swaps entered into by a cooperative or a member that is not an ECP will need to be executed on a board of trade and therefore will be cleared.

[94] *See* 77 FR 30596, 30701 (May 23, 2012); *see also* 75 FR 80898, 80926 (Dec. 23, 2010).

[95] 7 U.S.C. 2(e).

[96] *See* 66 FR 20740, 20743 (Apr. 25, 2001).

[97] The FHL banks would not qualify for the cooperative exemption because they have large financial entity members. *See* section IV above.

community bank is or becomes a member of an exempt cooperative and enters into a swap bilaterally with an exempt cooperative for which the cooperative exemption is elected, that member would have to be an ECP, in order to enter into the swap bilaterally, and also an entity that could elect the end-user exception. Accordingly, the Commission continues to believe that the cooperative exemption will not have a significant economic impact on small entities.

Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the final regulation would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

Regulation § 39.6(f)(3) (now § 50.51(c)) requires a cooperative to conform with certain reporting conditions if it elects the cooperative exemption. These new requirements constitute a collection of information within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[98] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it has been approved by the Office of Management and Budget ("OMB") and displays a currently valid control number.[99] This rulemaking contains new collections of information for which the Commission must seek a valid control number. The Commission therefore requested that OMB assign a control number and OMB assigned control number 3038–0102 for this new collection of information. The Commission has also submitted the proposed rulemaking, this final rule release, and supporting documentation to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for these new collections of information is "Rule 39.6(f) Cooperative Clearing Exemption Notification." Responses to these information collections will be mandatory if the cooperative exemption is elected.

With respect to all of the Commission's collections, the Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information To Be Provided by Reporting Parties

For each swap where the exemption is elected, either the cooperative, or its counterparty if the counterparty is an SD or MSP, must report: (1) That the election of the exemption is being made; (2) which party is the electing counterparty; and (3) certain information specific to the electing counterparty unless that information has already been provided by the electing counterparty through an annual filing. As noted in the NPRM, the third set of information comprises data that is likely to remain relatively constant for many, but not all, electing counterparties and therefore, does not require swap-by-swap reporting and can be reported less frequently. In addition, for entities registered with the SEC, the reporting party will also be required to report: (1) The SEC filer's central index key number; and (2) that an appropriate committee of the board of directors has approved the decision for that entity to enter into swaps that are exempt from the requirements of section 2(h)(1)(A) of the CEA.

Exempt cooperatives entering into swaps with members and electing the exemption will likely be responsible to report this information. When cooperatives enter into swaps with SDs or MSPs, the SDs or MSPs will be responsible for reporting the information, but cooperatives would bear some costs related to the personnel hours committed to reporting the required information.

As discussed in the NPRM, for purposes of estimating the cost of reporting in connection with the cooperative exemption, the Commission estimated that each of the ten exempt cooperatives would enter into 50 swaps per year on average. Accordingly, the Commission estimated that exempt cooperatives would elect the cooperative exemption for 500 swaps each year. The reporting cost estimates are discussed separately below according to each requirement.

The Commission invited public comment on any aspect of the reporting burdens discussed in the NPRM. The Commission received two comments on the Commission's approach to calculating the estimated cost burdens. The ABA questioned whether the Commission had underestimated its estimations of the number of cooperatives eligible for the exemption, and the number of swaps each eligible cooperative engages in per year. The ABA also commented that the figures used are static and as such do not allow for potential future growth in the number of potential exempt cooperatives and number of swaps in which they may transact. The ICBA similarly commented on the static nature Commission's approach, and noted that the approach does not account for future growth when the use of swaps in the OTC market has grown significantly in recent years. Furthermore, the ICBA noted that the CFTC looked at information from five of the ten estimated cooperatives that may be eligible for the cooperative exemption, but did not indicate which of the five cooperatives it considered or what the reason was for not reviewing information from the other five cooperatives.

In response to the comments received, the Commission notes that the commenters provided no data or other information to support their assertions that the number of cooperatives and the number of swaps that may be eligible for the cooperative exemption may be low or inaccurate. The summary information regarding swap activities of five prospective exempt cooperatives was provided to the Commission on a voluntary basis through the FCC and CFC. Based on discussions with these entities, the Commission believes that these five cooperatives were more active than the other potential exempt cooperatives in using swaps and therefore this sampling of information was appropriate for estimating the number of swaps executed by the ten potential exempt cooperatives identified by the Commission. Subsequent to receipt of the comments on the NPRM, the Commission contacted the regulators for FCS cooperatives and federal credit unions and these regulators expressed a view that the Commission's estimates were not inappropriate.

In response to the comments that the estimates represent only a current snap shot of activity, the Commission recognizes that the number of entities eligible for the exemption and the number of swaps per eligible cooperative is likely to change in the future and that the benefits of this exemption for exempt cooperatives could encourage more exempt cooperatives to use swaps and could increase the number of swaps used by those cooperatives. However, the Commission notes that whether such growth is realized also depends on

[98] 44 U.S.C. 3501 *et seq.*

[99] *Id.*

additional factors that the Commission does not have adequate information to evaluate such as: (1) Subsequent changes to laws or regulations affecting one or more types of cooperatives and the extent to which they may use swaps; (2) increases or decreases in the total amount of borrowing undertaken by the members of those cooperatives; and (3) the frequency with which exempt cooperatives make the types of loans or experience other business changes that might increase or decrease the use of swaps. It is not possible to evaluate how future changes in these factors are likely to affect the number of swaps for which the cooperative exemption may be elected. Accordingly, the Commission believes using a static estimate is reasonable.

a. Regulation § 39.6(f)(3) (now § 50.51(c)): Reporting Requirements

Regulation § 39.6(f)(3) (now § 50.51(c)) requires exempt cooperatives that are reporting counterparties to comply with the reporting requirements of § 50.50(b), which require delivering specific information to a registered SDR or, if no SDR is available, the Commission. An exempt cooperative that is the reporting counterparty would have to report the information required in § 50.50(b)(1)(i) and (ii) for each swap for which it elects the cooperative exemption.

As discussed in the NPRM, the Commission anticipates that to comply with § 50.50(b)(1)(i) and (ii), each reporting counterparty would be required to check one box in the SDR or Commission reporting data fields indicating that the exempt cooperative is electing not to clear the swap. The Commission estimated that the cost of complying with this requirement for each reporting counterparty to be between less than $1 and $7 for each transaction, or approximately $300 to $3,500 per year for all transactions.

The Commission did not receive any comments concerning the cost to exempt cooperatives from complying with § 50.50(b)(1)(i) and (ii).

b. Regulation § 50.50(b)(1)(iii): Annual Reporting Option

Regulation 50.50(b)(1)(iii) allows for certain counterparty specific information identified therein to be reported either swap-by-swap by the reporting counterparty or annually by the electing counterparty. As discussed in the NPRM, the Commission anticipates that the exempt cooperatives will make annual filings of the information required. The Commission estimated the annual per cooperative cost for the filing to be between $200 and $590, or $2,000 to $5,900 as the aggregate cost for all exempt cooperatives.

The Commission did not receive any comments concerning the cost to exempt cooperatives for electing the annual reporting option under § 50.50(b)(1)(iii).

c. Updating Reporting Procedures

As discussed in the NPRM, the Commission anticipates that cooperatives electing the exemption that are reporting counterparties may need to modify their reporting systems to accommodate the additional data fields required by the rule. The Commission estimated that the modifications to comply with § 39.6(f)(3) (now § 50.51(c)) would likely cost each reporting counterparty between $340 and $3,400, with the aggregate one-time cost for all potential exempt cooperatives to be $3,400 to $34,100.

The Commission did not receive any comments concerning the cost to exempt cooperatives in updating their reporting systems to comply with § 39.6(f)(3) (now § 50.51(c)).

d. Burden on Non-Reporting Cooperatives

As discussed in the NPRM, when an exempt cooperative is not functioning as the reporting counterparty (*i.e.*, when transacting with an SD or MSP), the Commission anticipated that it may, at certain times, need to communicate information to its reporting counterparties in order to facilitate reporting. This information might include whether the exempt cooperative has filed an annual report pursuant to § 50.50(b), and information to facilitate any due diligence that the reporting counterparty may conduct. The Commission estimated that a non-reporting exempt cooperative would incur an annual aggregate cost for communicating information to the reporting counterparty between $400 and $39,000.[100]

The Commission did not receive any comments concerning the cost a non-reporting exempt cooperative will incur in communicating information to the reporting counterparty.

List of Subjects in 17 CFR Part 50

Business and industry, Clearing, Cooperatives, Reporting requirements, Swaps.

Accordingly, the CFTC amends 17 CFR part 50 as follows:

[100] The Commission noted the wide range in this estimation, but explained the range could not be narrowed given the unknowns associated with the cost estimate.

PART 50—CLEARING REQUIREMENT AND RELATED RULES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 7 U.S.C. 2 and 7a–1 as amended by Pub. L. 111–203. 124 Stat. 1376.

■ 2. Add § 50.51 to read as follows:

§ 50.51 Exemption for Cooperatives.

Exemption for cooperatives. Exempt cooperatives may elect not to clear certain swaps identified in paragraph (b) of this section that are otherwise subject to the clearing requirement of section 2(h)(1)(A) of the Act if the following requirements are satisfied.

(a) For the purposes of this paragraph, an *exempt cooperative* means a cooperative:

(1) Formed and existing pursuant to Federal or state law as a cooperative;

(2) That is a "financial entity," as defined in section 2(h)(7)(C)(i) of the Act, solely because of section 2(h)(7)(C)(i)(VIII) of the Act; and

(3) Each member of which is not a "financial entity," as defined in section 2(h)(7)(C)(i) of the Act, or if any member is a financial entity solely because of section 2(h)(7)(C)(i)(VIII) of the Act, such member is:

(i) Exempt from the definition of "financial entity" pursuant to § 50.50(d); or

(ii) A cooperative formed under Federal or state law as a cooperative and each member thereof is either not a "financial entity," as defined in section 2(h)(7)(C)(i) of the Act, or is exempt from the definition of "financial entity" pursuant to § 50.50(d).

(b) An exempt cooperative may elect not to clear a swap that is subject to the clearing requirement of section 2(h)(1)(A) of the Act if the swap:

(1) Is entered into with a member of the exempt cooperative in connection with originating a loan or loans for the member, which means the requirements of § 1.3(ggg)(5)(i), (ii), and (iii) are satisfied; *provided that,* for this purpose, the term "insured depository institution" as used in those sections is replaced with the term "exempt cooperative" and the word "customer" is replaced with the word "member;" or

(2) Hedges or mitigates commercial risk, in accordance with § 50.50(c), related to loans to members or arising from a swap or swaps that meet the requirements of paragraph (b)(1) of this section.

(c) An exempt cooperative that elects the exemption provided in this section shall comply with the requirements of § 50.50(b). For this purpose, the exempt cooperative shall be the "electing

counterparty," as such term is used in § 50.50(b), and for purposes of § 50.50(b)(1)(iii)(A), the reporting counterparty, as determined pursuant to § 45.8, shall report that an exemption is being elected in accordance with this section.

Issued in Washington, DC, on August 13, 2013, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Clearing Exemption for Certain Swaps Entered Into by Cooperatives—Commission Voting Summary

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton, O'Malia, and Wetjen voted in the affirmative.

[FR Doc. 2013–19945 Filed 8–21–13; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AD75

Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is adopting final regulations with respect to certain compliance obligations for commodity pool operators ("CPOs") of investment companies registered under the Investment Company Act of 1940 ("registered investment companies" or "RICs") that are required to register due to the recent amendments to its regulations. The Commission is also adopting amendments to certain provisions of part 4 of the Commission's regulations that are applicable to all CPOs and Commodity Trading Advisors ("CTAs").

DATES: *Effective dates:* This rule is effective August 22, 2013, except the amendments to §§ 4.7(b)(4), 4.12(c)(3)(i), 4.23, 4.26, and 4.36 which are effective September 23, 2013.

Compliance dates: Registered CPOs seeking exemption under these rules shall be required to comply with the conditions adopted in § 4.12(c)(3)(i) when the associated registered investment company updates its prospectus as described in Section II.F., below, and files the prospectus with the SEC. Moreover, the publication of these rules trigger the conditional compliance date that was established in the Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations rulemaking. 77 FR 11252, 11252 (Feb. 24, 2012). With the publication of these rules, registered CPOs of RICs must comply with § 4.27 on or before October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Amanda Lesher Olear, Associate Director, Telephone: (202) 418–5283, Email: *aolear@cftc.gov*, or Michael Ehrstein, Attorney-Advisor, Telephone: 202–418–5957, Email: *mehrstein@cftc.gov*, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

This rulemaking is related to the final rule adopted under RIN 3038–AD30.

A. Recent Amendments to § 4.5 as Applicable to RICs

The Commodity Exchange Act ("CEA")[1] provides the Commission with the authority to require registration of CPOs and CTAs,[2] to exclude any entity from registration as a CPO or CTA,[3] and to require "[e]very commodity trading advisor and commodity pool operator registered under [the CEA] to maintain books and records and file such reports in such form and manner as may be prescribed by the Commission."[4] The Commission also has the authority to "make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate the provisions or to accomplish any of the purposes of [the CEA]."[5]

In February 2012, the Commission adopted modifications to the exclusions from the definition of CPO that are delineated in § 4.5 ("2012 Final Rule").[6] Specifically, the Commission amended § 4.5 to modify the exclusion from the definition of "commodity pool operator" for those entities that are investment companies registered as such with the Securities and Exchange Commission ("SEC") pursuant to the Investment Company Act of 1940 ("'40 Act").[7] This modification amended the terms of the exclusion available to CPOs of RICs to include only those CPOs of RICs that commit no more than a de minimis portion of their assets to the trading of commodity interests that do not fall within the definition of bona fide hedging and who do not market themselves as a commodity pool or other commodity investment.[8] Pursuant to this amendment, any such CPO of a RIC that exceeds this level, or markets itself as such, will no longer be excluded from the definition of CPO. Accordingly, except for those CPOs of RICs who commit no more than a de minimis portion of their assets to the trading of commodity interests that do not fall within the definition of bona fide hedging and who do not market themselves as a commodity pool or other commodity investment, an operator of a RIC that meets the definition of "commodity pool operator" under § 4.10(d) of the Commission's regulations and § 1a(11) of the CEA must register as such with the Commission.[9]

B. Harmonization Proposal

In response to the Commission's February 2011 proposal to amend the § 4.5 exclusion with respect to CPOs of RICs,[10] as well a staff roundtable held on July 16, 2011 ("Roundtable"),[11] and meetings with interested parties, the Commission received numerous

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[1] 7 U.S.C. 1, *et seq.*

[2] 7 U.S.C. 6m.

[3] 7 U.S.C. 1a(11) and 1a(12).

[4] 7 U.S.C. 6n(3)(A). Under part 4 of the Commission's regulations, unless otherwise provided by the Commission, entities registered as CPOs have reporting obligations with respect to their operated pools. *See* 17 CFR 4.22.

[5] 7 U.S.C. 12a(5).

[6] 17 CFR 4.5. *See* 77 FR 11252 (Feb. 24, 2012); correction 77 FR 17328 (March 26, 2012). Prior to this Amendment, all RICs, and the principals and employees thereof, were excluded from the definition of "commodity pool operator," by virtue of the RICs registration under the Investment Company Act of 1940. The 2012 amendment to § 4.5 maintained this exclusion for those RICs that engage in a de minimis amount of non-bona fide hedging commodity interest transactions. *See id.* Specifically, the amendment to § 4.5 retained this exclusion for RICs whose non-bona fide hedging commodity interest transactions require aggregate initial margin and premiums that do not exceed five percent of the liquidation value of the qualifying pool's portfolio, or whose non-bona fide hedging commodity interest transactions' aggregate net notional value does not exceed 100 percent of the liquidation value of the pool's portfolio.

[7] 15 U.S.C. 80a–1, *et seq.* "SEC" as used herein means the Securities and Exchange Commission or its staff, as the context requires.

[8] 17 CFR 1.3(yy).

[9] Pursuant to the terms of § 4.14(a)(4), CPOs are not required to register as CTAs if the CPOs' commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which they are registered as CPOs. 17 CFR 4.14(a)(4).

[10] 76 FR 7976 (Feb. 11, 2011).

[11] See Notice of CFTC Staff Roundtable Discussion on Proposed Changes to Registration and Compliance Regime for Commodity Pool Operators and Commodity Trading Advisors, available at *http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff070611.*

comments expressing concern about the relationship between part 4 of the Commission's regulations applicable to CPOs of RICs and the SEC rules and guidance under the '40 Act, the Securities Act of 1933 ("Securities Act"),[12] and the Securities Exchange Act of 1934 [13] regarding disclosure, reporting and recordkeeping by RICs (collectively, "SEC RIC Rules").[14] Commenters asserted variously that the two sets of requirements touched upon similar areas, imposed undue burdens on CPOs of RICs, or conflicted such that CPOs of RICs could not comply with both. On this basis, some commenters argued that CPOs of RICs should not be required to comply with the full set of requirements under part 4. Several previously received comments, which were noted in the Proposal, suggested that the Commission make relief available, with respect to document and report distribution, similar to that which it has recently adopted with respect to exchange-traded funds ("ETFs").[15]

Some commenters suggested ways in which the two agencies' requirements could be harmonized to eliminate the inconsistencies between the two compliance regimes with respect to those entities subject to dual registration as a result of the recent amendments to § 4.5. Specific areas of focus identified by the commenters include: The timing of delivery of Disclosure Documents to prospective participants; the signed acknowledgement requirement for receipt of Disclosure Documents; the cycle for updating Disclosure Documents; the timing of financial reporting to participants; the requirement that a CPO maintain its books and records on site; the required disclosure of fees; the required disclosure of past performance; the inclusion of mandatory certification language; and the SEC-permitted use of a summary prospectus for open-ended registered investment companies.

Commenters advocated different approaches to harmonization. Some suggested that where requirements are inconsistent, the Commission should defer to SEC requirements.[16] A few commenters made recommendations about the treatment of specific disclosures, such as presenting both SEC and CFTC-required fee information and presenting certain performance information required by the CFTC in the Statement of Additional Information ("SAI").[17] One commenter noted that CPOs of RICs should be required to comply with all disclosure and other requirements applicable to registered CPOs.[18]

Sections 4n(3) and (4) of the CEA [19] authorize the Commission to adopt regulations requiring that CPOs maintain books and records and file reports with the Commission in the manner and form it prescribes. Such compliance obligations for CPOs are set forth in part 4 of the Commission's regulations and include a set of requirements that address disclosure, recordkeeping, and reporting obligations. The regulations are designed to promote market integrity and transparency, facilitate necessary Commission oversight, and provide important information to prospective participants. The requirement to comply with the full panoply of obligations set forth in part 4 of the Commission's regulations does not, however, follow inexorably from registration under the 2012 Final Rule requiring CPOs of RICs to register. The Commission determined, after consideration of the comments received, that further consideration was warranted concerning whether and to what extent CPOs of RICs ought to be subject to various part 4 requirements, and in the 2012 Final Rule suspended the obligations of CPOs of RICs with respect to most of the requirements of part 4 until further rulemaking.[20] The Commission's 2012 Final Rule imposed upon CPOs of RICs that do not otherwise qualify for an exemption only the requirement to register.[21] The Commission also finalized, but suspended compliance with, pending the completion of further rulemaking, a requirement that CPOs of RICs file certain information on form CPO–PQR, pursuant to § 4.27. At the same time, consistent with the Commission's authority under § 4.12(a), the Commission commenced a new rulemaking to evaluate the necessity and reasonableness of additional requirements and, where possible, to devise ways in which the Commission's requirements for CPOs of RICs could be harmonized with applicable requirements of the SEC.[22]

The Commission therefore published for comment in the **Federal Register** proposed amendments to part 4 of the Commission's regulations designed to address potentially conflicting or duplicative compliance obligations administered by the Commission and the SEC regarding disclosure, reporting and recordkeeping by CPOs of RICs (the "Proposal").[23] The Commission proposed changes to part 4 designed to better harmonize the Commission's compliance obligations for CPOs with those of the SEC for entities that are subject to both regimes in such a way that would allow the Commission to fulfill its regulatory mandate while, at the same time, avoiding unnecessary regulatory burdens on dually-regulated CPOs of RICs with respect to disclosure, annual and periodic reporting to participants, and Commission recordkeeping requirements.[24]

The Proposal to harmonize the Commission's regulatory regime with that of the SEC as it applies to CPOs of RICs is grounded in the concept of substituted compliance. That is, insofar as the disclosure, reporting, and recordkeeping regime administered by

[12] 15 U.S.C. 77a, et seq.

[13] 15 U.S.C. 78a, et seq.

[14] The Commission understands that that SEC provides guidance in a variety of ways to market participants, including interpretive guidance, no action letters, frequently asked questions, and staff feedback in response to document submissions. The Commission also notes that RICs may be subject to separate requirements imposed by the Financial Industry Regulatory Authority.

[15] See 76 FR 28641 (May 18, 2011). The Commission adopted rules to relieve individual CPOs of publicly offered, ETFs of certain requirements in part 4 of the Commission's regulations. Specifically, the Commission adopted amendments to § 4.12 providing exemptive relief from §§ 4.21, 4.22, and 4.23 for operators of ETFs. Such relief includes providing disclosure and periodic accounts statements to participants through the Internet and permitting the use of third-party service providers for recordkeeping obligations. Previously, Commission staff had issued relief to ETFs only on a case-by-case basis. ETFs that are also RICs may rely on the relief provided herein.

[16] See, e.g., Comment letter from the Investment Company Institute (April 12, 2011) (ICI Letter).

[17] See, e.g., Comment letter from the National Futures Association (April 12, 2011) (NFA Letter).

[18] See Comment letter from Steben & Company, Inc. (April 25, 2012) (Steben letter).

[19] 7 U.S.C. 6n(3) and (4).

[20] See 2012 Final Rule, *supra* note 6, 77 FR at 11252, 11255. The Commission exercised its authority under §§ 4 and 8a of the CEA, 7 U.S.C. 6 and 12a, and § 4.12(a) of its regulations thereunder, which provides that the Commission may exempt any person or class of persons from any or all of part 4 requirements if the Commission finds that the exemption is not contrary to the public interest or the purposes of the provision from which the exemption is sought. 17 CFR 4.12(a).

[21] The Commission's regulations also provide for exemptions from registration for CPOs of privately offered pools that engage in a de minimis amount of commodities trading (17 CFR 4.13(a)(3)), CPOs whose total capital contributions for all operated pools do not exceed $400,000 and whose total participants do not exceed 15 (17 CFR 4.13(a)(2)), and CPOs that do not advertise and who do not receive any incentive or management fees (17 CFR 4.13(a)(1)).

[22] See 2012 Final Rule, *supra* note 6, 77 FR at 11260 ("Entities required to register due to the amendments to § 4.5 shall be subject to the Commission's recordkeeping, reporting, and disclosure requirements set forth in part 4 of the Commission's regulations within 60 days following the effectiveness of a final rule implementing the Commission's proposed harmonization effort pursuant to the concurrent proposed rulemaking.").

[23] 77 FR 11345 (Feb. 24, 2012).

[24] The Commission issued its proposal under the authority of §§ 4m, 4n, and 8a(5) of the CEA. 7 U.S.C. 6m, 6n, and 12a(5).

the SEC under SEC RIC Rules were designed to achieve substantially similar goals to those of the Commission's part 4 regulations, then CPOs of RICs that maintain compliance under the SEC regime would be deemed to fulfill their obligations under part 4 of the Commission's regulations. At the same time, in the event that a CPO of a RIC fails to comply with the SEC administered regime, the CPO will be in violation of its obligations under part 4 of the Commission's regulations and thus subject to enforcement action by the Commission. As such, the Proposal contemplated an alternative means for a CPO of a RIC to comply with its obligations under part 4 of the Commission's regulations by modifying certain of the requirements. These proposed modifications included: The timing of the delivery of Disclosure Documents to prospective participants; the signed acknowledgement requirement for receipt of Disclosure Documents; the cycle for updating Disclosure Documents; the timing of financial reporting to participants; the requirement that a CPO maintain its books and records on site; the required disclosure of fees; the required disclosure of past performance; the inclusion of mandatory certification language; and the SEC-permitted use of a summary prospectus for open-ended registered investment companies.

As stated in the 2012 Final Rule, the justification for the amendments to § 4.5 was to enable the Commission to adequately discharge its duties to oversee the commodity interest markets. Therefore, the Commission determined to require the CPOs of RICs that exceeded a de minimis threshold of commodity interest trading, excluding bona fide hedging, or which marketed themselves as a commodity pool or other commodity investment, to register with the Commission. The Commission recognizes, however, that its understanding of RICs and their use of commodity interests continues to evolve as it gains experience regarding RICs, and their regulation and operation. Thus, at this time, the Commission believes that the prudent approach is to provide a substituted compliance regime based largely upon adherence to the regime administered by the SEC as it continues to expand its knowledge of RICs and their use of commodity interests.

Therefore, in this final rule, the Commission has determined to broaden the approach set forth in the Proposal. The Commission is adopting a substituted compliance regime for CPOs of RICs largely premised upon such entities' adherence to the compliance obligations under SEC RIC Rules, whereby the Commission will accept compliance by such entities with the disclosure, reporting, and recordkeeping regime administered by the SEC as substituted compliance with part 4 of the Commission's regulations. The Commission has concluded that this is appropriate because, as the Commission continues to gain experience regulating CPOs of RICs, it believes that general reliance upon the SEC's compliance regime, with minor additional disclosure, should provide market participants and the general public with meaningful disclosure, including for example, with regard to risks and fees, provide the Commission with information necessary to its oversight of CPOs, and ensure that CPOs of RICs maintain appropriate records regarding their operations. As noted, in the event that the operator of the RIC fails to comply with the SEC administered regime, the operator of the RIC will be in violation of its obligations under part 4 of the Commission's regulations and subject to enforcement action by the Commission.

C. Comments on the Proposal

The Commission received 66 comment letters regarding the Proposal from a wide range of entities, including trade and public interest organizations, family offices, a registered futures association, individuals, currently registered CPOs, RICs, and law firms.[25] Generally, commenters favored the Commission's effort to harmonize for CPOs of RICs the Commission's part 4 regulations with SEC-administered rules.[26] Commenters particularly focused on disclosure issues, including the "break-even" disclosure, required statements of risk, cycle for updating Disclosure Documents, financial reporting including periodic account statements, and books and records requirements.[27] In addition, some commenters advocated modifications to part 4 requirements that they believed were necessary to maintain suitable regulatory requirements for all CPOs.[28] Commenters also addressed potential costs and benefits of harmonizing CFTC and SEC rules applicable to RICs.[29]

Beginning in 2011, Commission staff has engaged in ongoing substantive discussions with SEC staff regarding possible areas of harmonization between the compliance regimes of the two commissions as applicable to RICs and their CPOs, including disclosure to prospective investors and financial reporting. Such consultations occurred throughout the process culminating in this final rule and have informed the Commission's understanding of RICs and the SEC's regulation thereof.

D. Significant Changes From the Proposal

In the Proposal, the Commission stated its intent to facilitate compliance by CPOs of RICs with the Commission's disclosure, reporting, and recordkeeping requirements. As a result, the Commission proposed various alternative mechanisms to enable dually registered operators of RICs to comply with the Commission's part 4 requirements.[30] After consideration of the comments received and further deliberation, the Commission is adopting rules that effectively

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[25] *See http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1161.* The Commission notes that it received six duplicate comment letters; thus, the Commission received 60 unique comments. Of the comments received, many focused on the advisability of an exemption for single-family pools ("Family Offices"). The Commission's Division of Swap Dealer and Intermediary Oversight issued a letter on November 29, 2012, providing that it would not recommend enforcement action against the operator of a "family office" as that term has been defined in the SEC's regulations. *See,* CFTC Staff Letter, 12-37, available at *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-37.pdf.* The Commission further notes that it has considered additional comments, including those received at and following the Roundtable, *see supra* note 11, regarding the harmonization of CFTC and SEC regulation applicable to operators of RICs.

[26] *See,* e.g., NFA Letter; Comment letter from Campbell & Company, Inc. (April 24, 2012) (Campbell Letter).

[27] *See,* e.g., Comment letter from New York City Bar Association (May 30, 2012) (NYCBA Letter); Comment letter from Securities Industry and Financial Markets Association Asset Management Group (April 24, 2012) (SIFMA AMG Letter); Comment letter from Fidelity Management and Research Company (April 24, 2012) (Fidelity Letter).

[28] NFA Letter; Campbell Letter; Comment letter from the Managed Funds Association (April 24, 2012) (MFA Letter).

[29] ICI Letter.

[30] In five of the eleven areas of potential redundancy, inconsistency, or conflict addressed in the Proposal, the Commission proposed allowing substituted compliance by adherence to SEC regulations. Under the proposal, CPOs of RICs would be exempt from disclosure requirements under §§ 4.21, 4.22, and 4.23. *See* Proposal, *supra* note 23, 77 FR at 11346. CPOs of RICs would also be exempt from more frequent disclosures required by § 4.26, and the oath or affirmation required by § 4.22(h). *Id.* For four other areas of potential conflict, the Commission proposed allowing the requested information to be disclosed instead in SEC filings. Specifically, the proposal provides alternative methods of satisfying §§ 4.24(a), 4.25(d)(5), 4.25(d), and 4.24(i), which ordinarily require a cautionary statement, break-even points, and disclosure of fees and expenses, and requires that they be located in the forepart of the document. With respect to the last two areas—the frequency of the provision to customers of account statements and the content of disclosures regarding past performance of commodity pools less than three years old—the Commission proposed maintaining its own standards, but also solicited comments on how it could harmonize those last two areas.

implement a substituted compliance approach for dually registered CPOs of RICs, whereby such CPOs, largely through compliance with obligations imposed by the SEC, will be deemed compliant with the Commission's regulatory regime. This is consistent with the Commission's conclusion that substituted compliance is appropriate because it believes that the regime administered by the SEC under SEC RIC Rules, with minor additional disclosure, should provide market participants with meaningful disclosure as required under part 4, enable the Commission to discharge its regulatory oversight function with respect to the derivatives markets, and ensure that CPOs of RICs maintain appropriate records regarding their operations.

The Commission is also modifying certain part 4 requirements that are applicable to all CPOs to recognize certain technological improvements and operational efficiencies that have developed since part 4 was last revised. The key changes from the Proposal that the Commission is making in the rules it is adopting today are as follows: (1) Operators of RICs will be deemed to be in compliance with §§ 4.21, 4.22(a) and (b), 4.24, 4.25, and 4.26 if they satisfy all applicable SEC RIC Rules as well as certain other conditions; (2) all CPOs will be permitted to use third-party service providers to maintain their books and records; and (3) the signed acknowledgement requirement is being rescinded for all CPOs. The reasoning underlying each of the enumerated changes is discussed infra.

Accordingly, a CPO of a RIC may comply with part 4 requirements applicable to all CPOs *or* elect to comply through substituted compliance, subject to the conditions specified in amended § 4.12(c). In the latter case, the CPO of a RIC will be subject to the following requirements:

- The CPO of a RIC will be required to file notice of its use of the substituted compliance regime outlined in § 4.12 with NFA;
- The CPO of a RIC with less than three years operating history will be required to disclose the performance of all accounts and pools that are managed by the CPO and that have investment objectives, policies, and strategies substantially similar to those of the offered pool;
- The CPO of a RIC will be required to file the financial statements with the National Futures Association ("NFA") that it prepares pursuant to its obligations with respect to the SEC; and
- If the CPO of a RIC uses or intends to use third-party service providers for recordkeeping purposes, it will be required to file notice with NFA.

In light of the requirements applicable to RICs under SEC RIC Rules, the Commission has endeavored to harmonize its regulations to achieve a reasonable balance that serves the Commission's regulatory goals under part 4 of its regulations.[31] In addition, the Commission has determined to modify certain part 4 requirements applicable to all CPOs, including CPOs of RICs. In particular, this final rule will permit a CPO of a RIC to use a third-party service provider for recordkeeping purposes. A CPO electing to do so will be required to file a notice with the NFA. Additionally, all CPOs and CTAs will be permitted to use a Disclosure Document for up to 12 months.

II. Discussion

A. Scope and Timing

The Commission received many comments that pertained to the scope and timing of the Proposal. For example, some commenters expressed displeasure with the Commission's recent amendments to § 4.5 and § 4.27.[32] One commenter said the Proposal is unripe and should be withdrawn pending the judicial challenge of the § 4.5 amendments.[33] Another commenter suggested the Commission withdraw its Proposal and re-propose harmonized compliance obligations for RICs.[34] Other commenters requested broad exemptions from all part 4 regulations.[35] One commenter, for example, suggested that the Commission more narrowly tailor the part 4 requirements to those funds that use derivatives as a primary investment strategy and exempt from registration funds that only use derivatives for diversification and/or hedging purposes.[36] Another commenter contended that the rules must take into account the differences between open-ended funds (which continuously offer shares and redeem through the company) and closed-ended funds (which generally have an initial offering and then trade shares on an exchange).[37] Some commenters suggested that the Commission work with the SEC in order to more effectively harmonize the requirements of the two regimes, and in particular, ensure that compliance with the one regulatory regime would not cause a violation of the other.[38]

The Commission is aware that some commenters do not believe that CPOs of RICs should be required to register with the Commission. The CPO registration requirement in § 4.5, however, is outside the scope of this rulemaking. The Commission previously determined that, given its new responsibilities under the Dodd-Frank Act, and the changes in the markets within the Commission's responsibilities in recent years, the operator of a RIC that engages in more than a de minimis amount of non-bona fide hedging commodity interest transactions or markets itself as a commodity pool or other commodity investment must register as a CPO and file form CPO–PQR.[39]

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[31] 7 U.S.C. 19(a). It is the Commission's intent that if any portion of this rulemaking is held invalid, such invalidity shall not affect other provisions or applications of the Commission's regulations which can be given effect without the invalid provision or application, including without limitation other amendments to part 4 in this or the February 2012 Final Rule, and to this end each provision of this final rule is severable.

[32] ICI Letter, comment letter from U.S. Chamber of Commerce (April 24, 2012) (Chamber Letter); comment letter from Dechert LLP and Clients (April 24, 2012) (Dechert Letter).

[33] Chamber Letter. This commenter also stated that harmonization is unripe because, among other things, regulations needed to complete the implementation of Title VII of Dodd-Frank are still not finalized. To the extent this commenter was referring to the finalization of the Commission and SEC's further definition of "swap," that definition has now been finalized. This commenter and others have stated that the Commission could not, prior to the adoption of that final definition, properly consider the costs and benefits of the amendments to § 4.5 and proposed, therefore, the exclusion of swaps from the thresholds above which the operator of a RIC must register as a CPO. As the Commission explained in the 2012 Final Rule amending § 4.5, however, the costs and benefits were sufficiently clear at that time. The Commission explained that swap trading above a de minimis threshold implicates its regulatory interests, whereas trading below the threshold may not. To permit unlimited swap trading without registration would undermine the regulatory interest described throughout the 2012 Final Rule release. Consistent with the Commission's expectation at the time of the 2012 Final Rule amending § 4.5, the 2012 Final Rule further defining "swap" did not further define the term "swap" in a manner that would have materially affected the Commission's decision to amend § 4.5. On December 12, 2012, the U.S. District Court for the District of Columbia affirmed the 2012 Final Rule's amendments to § 4.5 and adoption of § 4.27 as applicable to CPOs of RICs. The District Court's opinion is available at *https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2012cv0612-42.*

[34] ICI Letter.

[35] ICI Letter; comment letter from American Bar Association Federal Regulation of Securities Committee, Business Law Section (April 24, 2012) (ABA Letter); comment letter from AXA Equitable Funds Management Group, LLC (April 24, 2012) (AXA Letter); comment letter from The Association of Institutional Investors (April 24, 2012) (AII Letter); comment letter from Investment Adviser Association (April 24, 2012) (IAA Letter); NYCBA Letter; Fidelity Letter.

[36] Comment letter from Katten Muchin Rosenman LLP (April 24, 2012) (Katten Letter).

[37] SIMFA AMG Letter.

[38] Fidelity Letter; NYCBA Letter; ICI Letter.

[39] *See,* 2012 Final Rule, *supra* note 6, 77 FR 11252 (Feb. 24, 2012); corrected by 77 FR 17328 (Mar. 26, 2012); affirmed by U.S. District Court for the District of Columbia (Dec. 12, 2012), available at

Continued

Regarding obligations of registered CPOs, the Commission notes the concerns of commenters that dual registrants may be unable, or encounter substantial difficulty trying, to comply with both the CFTC and SEC regulatory regimes were they both required in their current state. The Commission believes that harmonization will reduce or eliminate such difficulty.

This rule release is focused on the harmonization of the Commission's compliance obligations under part 4 of its regulations with the requirements under the SEC RIC Rules. To that end, the Commission has considered the various provisions of part 4 and sought to address conflict, inconsistency, and duplication with SEC-administered disclosure, reporting and recordkeeping by RICs. Commission staff has also engaged in ongoing discussions with their counterparts at the SEC. The Commission believes that, with the final rules being adopted today, it has harmonized its compliance obligations with those of the SEC to the fullest extent practicable consistent with achieving the regulatory objectives of its part 4 regulations and its experience to date with CPOs of RICs.

B. Disclosure Requirements

a. Filing and Updating Disclosure Documents

Currently, § 4.26(a)(2) states that "[n]o commodity pool operator may use a Disclosure Document or profile document dated more than nine months prior to the date of its use." An identical provision applying to CTAs can be found in § 4.36(b). These provisions are designed to ensure that required disclosure materials remain current, complete, and accurate over time. Similarly, § 10(a)(3) of the Securities Act effectively requires an annual update of an open-end RIC's registration statement, and provides 4 months after the end of the fiscal year in order to do so.[40]

Additionally, § 4.26(c) states that if a CPO becomes aware of any incompleteness or material inaccuracy in its Disclosure Document, the CPO must correct the defect and distribute the correction to participants within 21 days of becoming aware of the defect. Section 4.26(c)(2) lists acceptable means of distributing the correction. The federal securities laws prohibit the offer or sale of a security, including shares of a RIC, by means of a materially misleading prospectus and impose liability for the use of such a prospectus.[41] Section 4.26(d) requires a CPO to submit all Disclosure Documents to NFA prior to distributing the document to participants and to submit updates to Disclosure Documents to NFA that correct material inaccuracies or incompleteness within 21 days of becoming aware of any defects. Registration statements for RICs are required to be filed with the SEC prior to becoming effective,[42] and the RIC Rules prescribe the timeframes for effectiveness of registration statement amendments after filing with the SEC.[43]

In the Proposal, to facilitate compliance with part 4 requirements for CPOs of RICs, the Commission proposed amending § 4.26 and § 4.36 to allow CPOs and CTAs to use Disclosure Documents up to twelve months from the date of the document. In response to comments received, the Commission is also addressing in this final rule § 4.26(c), which governs the time period for correcting materially inaccurate or incomplete disclosure, and § 4.26(d), which requires Disclosure Documents and updates to be filed with NFA.

1. Effective Time Period for Disclosure Documents

Commenters were generally supportive of the Commission's proposed amendments to §§ 4.26 and 4.36,[44] but also expressed concerns. Regarding the timing of disclosure, for example, some commenters suggested that the Commission extend the deadline applicable to all CPOs for using Disclosure Documents to sixteen months from the date of the document in order to accommodate the SEC's 120-day allowance under Rule 8b–16.[45] One commenter stated that the Proposal "provides no rationale for imposing the updating requirements of § 4.26(a)(1) on RICs" and does not "address the substantial costs these updates would impose."[46]

After careful consideration, the Commission has determined to adopt the amendment of §§ 4.26(a) and 4.36 as proposed. CPOs and CTAs will be permitted to use a Disclosure Document for up to 12 months. In addition, for CPOs of RICs, the Commission has determined that compliance with the applicable timeframes under the regime administered by the SEC under SEC RIC Rules will be deemed to satisfy the timing requirements in §§ 4.26(a) and 4.36.

As a general matter of policy, the Commission believes that sixteen months is not an optimal time period for providing updated information to participants. This is of particular concern with respect to past performance information and financial statements. The more distant the update of disclosure from the date of the pool's most recent financial statements, the less meaningful the information becomes to prospective participants deciding whether to invest. The Commission does believe, however, that efficiency can be gained by extending the time within which CPOs must update their Disclosure Documents from nine months to twelve months, as that time period aligns with the time period mandated for filing annual financial statements, which must be disclosed within the Disclosure Document. In the Commission's judgment, such efficiency justifies some delay in updating the Disclosure Document and the currency of the information thus available to participants. The Commission believes that the information available to participants will be sufficiently timely to enable participants to make informed investment decisions. Consistent with this determination that a twelve month updating cycle provides participants with information in a sufficiently timely manner, while also aligning with the larger CPO-industry twelve month regulatory calendar, the Commission is extending to twelve months the Disclosure Document update cycle requirement for all CPOs.

The Commission recognizes, however, that, absent harmonization, dual registrants may be required to comply with the disparate deadlines applicable under § 4.26 and the updating process implemented by the SEC pursuant to § 10(a)(3) of the Securities Act[47] and SEC Rule 485[48] thereunder. As noted above, § 4.26, as amended, requires a CPO to update a pool's Disclosure Document within 12 months of that Document's date of first use. As described above, § 10(a)(3) of the Securities Act and Securities Act Rule 485 requires open-end RICs to amend their registration statements annually

https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2012cv0612-42.

[40] Section 10(a)(3) of the Securities Act provides generally that when a prospectus is used more than nine months after the effective date of a registration statement, the information contained in the prospectus shall be as of a date not more than sixteen months prior to its use.

[41] Section 12(a)(2) of the Securities Act. See also, Section 17(a)(2) of the Securities Act (unlawful to obtain money or property by means of materially misleading statements and omissions in the offer or sale of securities).

[42] See, e.g., Section 8(a) of the Securities Act (effective date of registration statement shall be the twentieth day after filing or an earlier date determined by the SEC).

[43] See, Securities Act Rule 285, 17 CFR 230.485.

[44] AXA Letter; Steben Letter; IAA Letter.

[45] NYCBA Letter SIFMA AMG Letter; AII Letter.

[46] SIFMA AMG Letter.

[47] 15 U.S.C. 77j–24.

[48] 17 CFR 230.485.

and provides four months after the end of the fiscal year to do so.

Because the Commission is declining to adopt a sixteen-month update period for Disclosure Documents, absent other relief, CPOs of open-end RICs would have two different filing deadlines which would limit the ability for the CPO to take advantage of operational efficiencies that might be available if the Commission's deadlines coincided with those of the SEC. The Commission believes that the burden associated with requiring CPOs of open-end RICs to comply with two different updating schedules for their Disclosure Documents is not justified by the benefit of more frequent disclosures. Thus, the Commission has determined to permit CPOs of open-end RICs to satisfy these obligations through substituted compliance in accordance with the timeframe administered by the SEC. The Commission believes that this is appropriate because the past performance information required to be disclosed by CPOs of open-end RICs will differ from that generally required of CPOs, and, as discussed infra, CPOs of open-end RICs will not be required to separately submit their disclosures documents for review by the NFA.

2. Interim Updating of Disclosure Documents

Section 4.26(c) requires a CPO to correct material inaccuracies in a Disclosure Document within 21-days of the date upon which the CPO first becomes aware of the defect. The purpose of the 21-day window in which to correct material inaccuracies is to provide participants with timely corrected information. As described above, the federal securities laws prohibit the offer or sale of the shares of a RIC by means of a materially misleading prospectus and impose liability for the use of such a prospectus.

One commenter noted that the 21-day period under § 4.26(c)(1) is not required under SEC RIC Rules and that RICs which do not normally supplement their prospectuses would be required to do so in order to comply with § 4.26.[49] Another commenter suggested that existing securities law obligations for RICs regarding material misstatements or omissions should satisfy § 4.26, and thus "a simple exemption from the Part 4 requirements is appropriate."[50] Another commenter suggested that RICs that are in compliance with SEC updating rules should be deemed compliant with § 4.26(a) and (c).[51]

In light of the substantively similar goals of the two regulatory regimes to ensure that participants receive accurate information in a timely manner, and recognizing that, absent relief from § 4.26(c), CPOs of RICs could be required to provide an additional mailing to participants, the Commission has determined to deem CPOs of RICs that adhere to the disclosure requirements under SEC RIC Rules compliant with § 4.26(c). Subject to additional experience that the Commission expects to acquire regarding the operation and oversight of CPOs of RICs, the Commission, at this time, believes that correcting any inaccuracies within this pre-scheduled and near-term update should be considered to be timely. Moreover, the Commission does not believe that the schedule for updates imposed by the SEC will impair the Commission's regulatory interest in ensuring that prospective and current participants in a commodity pool receive accurate and complete information. As such, the Commission believes that substituted compliance is appropriate with respect to the updating of disclosures to participants and, therefore, the Commission has determined to deem CPOs of RICs compliant with the provisions of § 4.26, provided that they are in compliance with the regime administered by the SEC under SEC RIC Rules.

3. Review of Disclosure Documents by NFA

Many commenters who addressed § 4.26 were concerned that NFA's review process (§ 4.26(d)) is unnecessary and duplicative, and thus should not be required.[52] Commenters said that this additional review process could result in regulatory delays, create investor confusion, tax NFA's resources, prevent funds from issuing shares, and potentially subject funds to conflicting reviews from securities and derivatives regulators.[53] Some commenters noted that NFA's review process would be particularly challenging for RICs that make offerings through variable insurance products, as the distribution and updating of prospectuses for such RICs must be coordinated with their affiliated insurance companies, and that the Proposal does not address this issue.[54] One commenter also requested confirmation that "sticker" supplements—supplements tacked onto existing Disclosure Documents—would not be subject to NFA review, as § 4.26(d)(2) provides that updates may be filed with NFA at the same time they are distributed to participants.[55] Another commenter stated that the timelines for review between the SEC and CFTC requirements are different and conflicting. For example, if the NFA requests material changes, a CPO of a RIC may have to file the amendment with the SEC, triggering SEC review and potentially disrupting the issuance of shares. The commenter suggested that, should the CFTC decide to retain the NFA review requirement, it should limit the scope of the review to the part 4 disclosure requirements. This commenter further suggested that the SEC, CFTC, and NFA coordinate policies and processes to "avoid conflicting comments and prevent multiple filings and back-and-forth" during the review process.[56]

The Commission has determined that, although such disclosures must be made available to NFA to enable NFA to discharge its duty to monitor and examine CFTC registrants during an examination, it will not be necessary to file those documents with NFA according to the schedules provided in part 4 of the Commission's regulations or concurrent with their filing with the SEC, and those documents will not be subject to NFA approval. The Commission has decided that CPOs of RICs that take advantage of the relief provided under this rule must file a notice with NFA so that NFA and the Commission can identify which CPOs are claiming such relief and are not required to comply with the specific provisions of §§ 4.21, 4.24, 4.25, and 4.26. Providing this notice to NFA will facilitate compliance by market participants, assist the Commission's monitoring of the compliance of its registrants over time, and facilitate the enforcement of its rules with respect to all CPOs.

In sum, the Commission has determined to deem CPOs of RICs compliant with the provisions of § 4.26, provided that they are in compliance with the regime administered by the SEC under SEC RIC Rules.

b. Delivery and Acknowledgement of Disclosure Documents

Currently, § 4.21 requires a CPO to deliver a Disclosure Document to each participant, and obtain from that prospective participant a signed acknowledgment of receipt of the Disclosure Document before accepting

[49] SIFMA AMG Letter.

[50] ABA Letter.

[51] SIFMA AMG Letter.

[52] AXA Letter; ABA Letter; Katten Letter; ICI Letter; SIFMA AMG Letter.

[53] AXA Letter; ABA Letter; NYCBA Letter; ICI Letter; SIFMA AMG Letter.

[54] AXA Letter; ICI Letter.

[55] ABA Letter.

[56] SIFMA AMG Letter.

or receiving funds from that participant. The federal securities laws require delivery of a "statutory" prospectus to each RIC investor no later than the confirmation of the transaction and do not require signed acknowledgment prior to receipt of funds from an investor.[57]

The Commission proposed to modify § 4.12(c) to allow the CPO of a RIC to claim relief from § 4.21. The proposed revisions to § 4.12(c) would enable CPOs of RICs to claim relief from § 4.21 provided that the Disclosure Document is readily available on the RIC's Web site, or that of its designee.

Some commenters suggested a broad exemption from § 4.21 for all CPOs of RICs.[58] Another commenter noted that a listed, closed-end RIC does not normally post its prospectus or annual report online when not conducting an offering, and suggested that such funds should be fully exempted from § 4.21. This commenter also requested confirmation that: (a) the Web site may be the main Web site for the RIC's fund family or the RIC's distributor, so long as the Disclosure Document page is readily available from the main Web site; (b) password-protected Web sites (used by privately-offered funds) will remain acceptable under the Commission's rules; and (c) the distributor for a RIC would be permitted to maintain the Web site for a RIC under the Commission's rules.[59]

One commenter did not support the proposed amendments. This commenter claimed that the requirements are duplicative, as the information required to be posted on a Web site is already provided to investors through various SEC regulations. The commenter also suggested that compliance with § 4.12 may harm investors by broadly disclosing a fund's trading strategy.[60]

The Commission has determined to deem CPOs of RICs compliant with the provisions of § 4.21 provided that the CPO provides disclosure to participants and prospective participants consistent with the regime administered by the SEC under SEC RIC Rules. The SEC RIC Rules permit open-end RICs to send or give a summary prospectus, provided that the statutory prospectus and other information are available on an Internet Web site, the address of which is provided on cover page or at the beginning of the summary prospectus.[61] Any Web site permitted under the SEC RIC Rules will also be deemed compliant with the provisions of § 4.21 SEC regulations further provide that the RIC must provide paper copies of the statutory prospectus, SAI, and shareholder reports upon request at no cost to the requestor.[62] As the SEC RIC rules require that a participant receive substantial information about the fund (information that, as discussed above, would be deemed compliant with Commission regulations under part 4), the Commission believes that this SEC requirement is commensurate with the provisions of § 4.21 in that it provides a mechanism through which information about the investment in the RIC is disseminated to prospective participants. Under both part 4 of the Commission's regulations and the SEC's disclosure regime, information is made readily available to prospective investors in the pools. Therefore, the Commission believes it is appropriate to deem entities that comply with SEC disclosure delivery requirements to be compliant with their disclosure delivery obligation under part 4.

With respect to closed-end funds, under the Commission's regulations, CPOs are not required to maintain a current Disclosure Document for a pool if they are not soliciting participants for that pool.[63] Consistent with the Commission's reasoning regarding open-end RICs, provided that the closed-end fund is operated consistent with its obligations under SEC RIC Rules, the Commission believes that it is appropriate to deem CPOs of closed-end funds compliant with the requirements of § 4.21.

Additionally, for those funds that are organized as series entities with inter-series limitation of liability, the SEC permits multiple series to be included in a single registration statement, but permits reporting and disclosure to be accomplished on a series by series basis. Under the Commission's regulations, the pool is considered to be the discrete legal entity.[64] As such, the Commission's regulations would require any such filings to be prepared at the legal entity level, not at the series level. The Commission recognizes that under part 4, RICs would be required to undertake substantial efforts to reorganize their filings to comply with both regimes.[65] However, because the Commission has already determined to accept compliance with the regime administered by the SEC as substituted compliance with the Commission's compliance program, the Commission believes that such entities will continue to be able to make such filings consistent with SEC guidance regarding the same.

c. Use of the Summary Prospectus

Commenters also expressed concern about continuing to use the Summary Prospectus adopted by the SEC.[66] Because the SEC limits the information allowed in the Summary Prospectus, a commenter requested clarification that the CFTC is not requiring that any of the specific part 4 disclosure requirements be included in that document.[67] Another commenter suggested that the Commission allow registrants the option of providing a combined document or maintaining separate SEC- and CFTC-required disclosures.[68] Several commenters urged the Commission to provide assurances to CPOs of RICs that Summary Prospectus documents may still be utilized by funds in the format they currently use.[69] Another commenter expressed concern that requiring RICs to highlight new and amended disclosures under § 4.26 "would add unnecessary costs to the update process and could prove confusing to RIC shareholders" because such requirements are "not consistent with past practices."[70]

The Commission has determined to deem CPOs of RICs compliant with the provisions of §§ 4.24 and 4.25, provided that they are in compliance with the disclosure requirements of the Securities Act, the '40 Act, and the applicable SEC RIC Rules. By deeming such CPOs compliant, the ability to use a statutory prospectus and/or Summary Prospectus in a format recognizable to both funds and their participants has not been disturbed.

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[57] Securities Act § 5(b)(2) (unlawful to carry through the mails or in interstate commerce any security for the purpose of sale or delivery after sale unless accompanied or preceded by a "statutory" prospectus, i.e., a prospectus that meets the requirements of § 10(a) of the Securities Act). Open-end RICs may satisfy the prospectus delivery obligation by sending or giving a summary prospectus to investors and providing the statutory prospectus on an Internet Web site. Rule 498 under the Securities Act. 17 CFR 230.498.

[58] Katten Letter; ABA Letter.

[59] SIFMA AMG Letter.

[60] All Letter.

[61] *See*, 17 CFR 230.498.

[62] *Id.*

[63] *See*, 17 CFR 4.21 (requiring delivery of a Disclosure Document concurrent with the delivery of a subscription agreement to prospective participants).

[64] The Commission has determined that, per Regulation 4.20(a)(1), a pool is considered to be a separately cognizable legal entity. *See*, CFTC Staff Interpretative letter 10–29, available at *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/10-29.pdf.*

[65] The Commission reaffirms its position with respect to the entity qualification of "pool" as embodied in CFTC Staff Interpretative letter 10–29, available at *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/10-29.pdf.*

[66] 17 CFR 230.498.

[67] SIFMA AMG Letter.

[68] MFA Letter.

[69] ABA Letter; Katten Letter; NYCBA Letter.

[70] AXA Letter.

d. Risk Statements and Legends

Section 4.24(a)–(b) details specific disclosure statements that must appear in a CPO's Disclosure Document. The Commission requires a specific Cautionary Statement (§ 4.24(a)) to appear prominently on the cover page of the Disclosure Document.[71]

The Commission also requires certain Risk Disclosure Statements to be displayed immediately following any disclosures required to appear on the cover page. The disclosures most relevant to this rulemaking are found in § 4.24(b)(1).[72]

1. The Standard Cautionary Statement

The Commission proposed that, in lieu of the standard Cautionary Statement, the cover page of the RIC's prospectus may contain a statement that combines the language required by § 4.24(a) and Rule 481(b)(1) under the Securities Act.[73] The Proposal required the Risk Disclosure Statements to be presented concomitantly with SEC-required information in the RIC's prospectus.

One commenter claimed that the SEC must also grant relief to permit inclusion of the Cautionary Statement mandated in § 4.24(a) on the cover page of a prospectus; the commenter suggested the Commission ensure that the SEC has issued such relief before imposing the combined statement requirement.[74]

Other commenters objected to the disclosure statements, including the Cautionary Statement in § 4.24(a), as being "boilerplate," "technical," and "duplicative."[75] Commenters stated that such language is inconsistent with the SEC's "Plain English" disclosure requirements, which are designed to make prospectuses easier for investors to read, and thus their inclusion may create investor confusion.[76]

With respect to the prescribed cautionary statement required under § 4.24(a), the Commission finds that the statement as required by the SEC[77] performs a similar function as that required by the Commission, and has concluded that the cautionary statement prescribed in SEC Rule 481 under the Securities Act,[78] with minor modifications, addresses the Commission's concerns regarding the need for CPOs to adequately apprise investors that the Commission has not approved a particular disclosure that is provided to prospective participants. Therefore, the Commission has determined that it would be acceptable for CPOs of RICs to include the CFTC in the statement prescribed by the SEC under Securities Act Rule 481,[79] such that the statement would read either:

The Securities and Exchange Commission and the Commodity Futures Trading Commission have not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.

or

The Securities and Exchange Commission and the Commodity Futures Trading Commission have not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

2. The Standard Risk Disclosure Statement

Commenters also objected to the inclusion of the standard Risk Disclosure Statements found in § 4.24(b).[80] Several commenters remarked that the CFTC-required disclosures, designed for commodity pools, are not appropriate for funds because (a) SEC regulations prohibit a fund from maintaining high degrees of leverage; and/or (b) SEC regulations do not allow funds to restrict redemption rights.[81] These commenters contended that requiring such "inappropriate" disclosures would be misleading and confusing for investors.

In addition, one commenter contended that because the risks described in § 4.24(b) are non-principal risks for most mutual funds, and because the SEC has indicated that only principal risks should be disclosed in the summary prospectus, RICs should be exempt from these requirements. This commenter also noted that "[e]xhaustion of a fund's assets is essentially impossible" under the '40 Act.[82] Another commenter requested clarification about the placement of required disclosures. Specifically, the commenter noted that putting the standard CFTC risk disclosures in a RIC's summary prospectus may violate SEC Rule 498, which prohibits information other than that prescribed by that Rule from inclusion in the summary prospectus.[83]

Commenters also requested that the Commission allow RICs to use the term "fund" instead of "pool" in the Cautionary Statement as well as any mandated disclosure statements, as fund investors are unfamiliar with the term "pool" and may be confused by such language.[84]

The standard risk disclosure statement under § 4.24(b) sets forth standard disclosures of risks associated with the use of commodity interests, including generic discussions of liquidity, counterparty

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[71] The Cautionary Statement reads as follows: THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS POOL NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.

[72] Section 4.24(b)(1) reads as follows:

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. IN SO DOING, YOU SHOULD BE AWARE THAT COMMODITY INTEREST TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL.

FURTHER, COMMODITY POOLS MAY BE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT, AND ADVISORY AND BROKERAGE FEES. IT MAY BE NECESSARY FOR THOSE POOLS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH EXPENSE TO BE CHARGED THIS POOL AT (insert page number) AND A STATEMENT OF THE PERCENTAGE RETURN NECESSARY TO BREAK EVEN, THAT IS, TO RECOVER THE AMOUNT OF YOUR INITIAL INVESTMENT, AT PAGE (insert page number).

[73] The proposed rules provided suggested language in two examples; for instance, one example states: "The Securities and Exchange Commission and the Commodity Futures Trading Commission have not approved or disapproved these securities or this pool, or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense." *See* Proposal, *supra* note 23, 77 FR at 11351.

[74] ICI Letter.

[75] ABA Letter; Dechert Letter; Fidelity Letter; AII Letter; SIFMA AMG Letter.

[76] AXA Letter; ABA Letter; Dechert Letter; AII Letter.

[77] Securities Act Rule 481 (17 CFR 230.481) requires that the outside front cover page of a prospectus contain a legend that indicates that the SEC has not approved or disapproved the securities or passed upon the accurace or adequacy of the disclosure in the prospectus and that any contrary representation is a criminal offense. The legend may be one of the two following statements in clear and concise language:

The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense; or

The Securities and Exchange Commission has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

[78] 17 CFR 230.481(b)(1).

[79] 17 CFR 230.481(b)(1).

[80] AXA Letter; ABA Letter; Dechert Letter; Fidelity Letter; AII Letter; NYCBA Letter; SIFMA AMG Letter.

[81] AXA Letter; ABA Letter; Dechert Letter; NYCBA Letter; SIFMA AMG Letter; ICI Letter.

[82] Dechert Letter.

[83] AXA Letter.

[84] AXA Letter; Dechert Letter; SIFMA AMG Letter; comment letter from Invesco Advisers, Inc. (April 24, 2012) (Invesco Letter); ICI Letter.

creditworthiness, and limits on the ability to alter the terms of certain swap agreements.[85] Because open-end RICs are required to honor redemption requests within 7 days,[86] the Commission believes that, absent information to the contrary, the generic discussion of risks required as part of the standard risk disclosure statement under § 4.24(b) may differ with respect to RICs, in that investor liquidity is necessarily required as a function of fulfilling the redemption obligations under the '40 Act. Therefore, the risk that a participant will be unable to redeem in a timely manner appears to be mitigated. Further, with respect to closed-end funds, because interests in such funds are generally not redeemed directly from the fund, but rather are traded in the secondary market, it would appear that the risks discussed in the prescribed risk disclosure statement under § 4.24(b) may not be precisely applicable to their operation. For the foregoing reasons, the Commission believes that the specific risks delineated in the prescribed cautionary statement may not reflect those associated with investment in a RIC, and therefore, has determined not to require CPOs of RICs to include the standard risk disclosure statement required under § 4.24(b).[87] Having considered the comments received as well as the redemption requirements of RICs under the '40 Act, the Commission has determined to deem CPOs of RICs compliant with the requirements of § 4.24(a) and (b) provided that the CPO complies with the related regime administered by the SEC pursuant to the SEC RIC Rules, including disclosure requirements in Section 10 of the Securities Act and other provisions of the Securities Act and '40 Act,, Rule 498[88] under the Securities Act, and forms N–1A and N–2.

e. Risk Disclosure

Section 4.24(g) requires a discussion of the principal risk factors of participation in the offered pool. It further requires that the discussion must include, without limitation, risks relating to volatility, leverage, liquidity, and counterparty creditworthiness, as applicable to the trading programs followed, trading structures used, and investment activities of the offered pool.

One commenter suggested that the risks required to be disclosed pursuant to the SEC's disclosure requirements provide comparable information to that mandated by the Commission's regulations.[89] That commenter also suggested that the Commission should exempt CPOs of RICs from the risk disclosure requirements set forth in § 4.24(g) because they are generic and are required to appear in a single section of the Disclosure Document rather than in various sections of the disclosure as permitted by the SEC.

The Commission believes that, although the CPOs of RICs may elect to comply with §§ 4.24, 4.25 and 4.26 through substituted compliance, the disclosure provided by CPOs of RICs to prospective participants should include true, accurate, and complete information describing the commodity-interest activities of the pool, including a discussion of the material risks of those assets and activities. The Commission understands that SEC forms N–1A and N–2 require disclosure of the principal risks associated with investment in the RIC and that, to the extent that the use of commodity interests creates such a risk, it must be disclosed to prospective investors. This is consistent with the requirements set forth in § 4.24(g), which also requires the disclosure of the principal risks of investing in the pool, and which mandates that such disclosures be appropriately tailored to reflect the risks associated with the investment strategy and instruments traded by the offered pool. Moreover, the Commission does not believe that the fact that the disclosures may appear in multiple places under the SEC's disclosure requirements is inconsistent with the Commission's regulations, as such regulations do not require that such disclosures appear in a single section of the Disclosure Document. The Commission believes that the disclosure requirements on SEC forms N–1A and N–2, consistent with guidance from SEC staff, including the letter issued by the Division of Investment Management in 2010,[90] should satisfy the Commission's concern that participants receive complete and accurate disclosure about the risks associated with investment in commodity interests. CPOs of RICs must likewise comply with any applicable SEC guidance, including guidance that may be issued hereafter, concerning these disclosure requirements, which the Commission will evaluate for consistency with its own regulatory interests. The Commission understands, for example, that the Division of Investment Management at the SEC intends to issue additional guidance to RICs regarding compliance with certain aspects of the SEC RIC Rules.

f. Break Even Disclosure

Section 4.24(d)(5) requires CPOs to include in the forepart of the Disclosure Document the break-even point per unit of initial investment. Section 4.10(j) defines the break-even point as "the trading profit that a pool must realize in the first year of a participant's investment to equal all fees and expenses such that such participant will recoup its initial investment, as calculated pursuant to rules promulgated by a registered futures association pursuant to section 17(j) of the Act."

The Commission proposed to consider the "forepart" of the document to be the section immediately following all-disclosures required by SEC form N–1A. The Commission did not propose to relieve RICs of the requirement to provide the break-even point disclosure, however, stating that "[the] Commission continues to believe that the inclusion of . . . the break-even point . . . is a necessary disclosure because, among other requirements, it mandates a greater level of detail regarding brokerage fees and does not assume a specific rate of return."

One commenter supported the Commission's position that the break-even table should be included in the prospectus of an investment company.[91]

However, other commenters generally believed that RICs should be exempt from disclosing the break-even point.[92] Some commenters claimed that the break-even point and analysis serves the same purpose as the tabular presentation of fees required by SEC regulations, and thus including such information would be duplicative and unnecessary.[93] One commenter believed that the current SEC-required disclosures are better suited to funds "given that they are continually offered and have daily changing asset levels." This commenter also believed that the CFTC did not identify why the break-even point is necessary or why the fact that it does not assume a rate of return

[85] 17 CFR 4.24(b).

[86] 15 U.S.C. 80a–22(e).

[87] Because the Commission has determined not to require CPOs of RICs to include the Standard Risk Disclosure statement in their Disclosure Documents, the Commission does not have to address the issue of using the term "fund" in lieu of "pool" within the risk disclosure statement.

[88] 17 CFR 230.498.

[89] ICI Letter.

[90] Letter from the Division of Investment Management, Securities and Exchange Commission, to the Investment Company Institute, July 30, 2010, available at *http://www.sec.gov/divisions/investment/guidance/ici073010.pdf.*

[91] Steben Letter.

[92] AXA Letter; ABA Letter; Dechert Letter; ICI Letter; NYCBA Letter.

[93] AXA Letter; ABA Letter; ICI Letter.

makes the disclosure more meaningful for investors.[94] Some commenters contended that including the break-even point and analysis may undermine the SEC's goal of providing comparable disclosures and make it harder for potential investors to compare information across funds.[95] Another commenter argued that the Commission is incorrect in suggesting that the SEC's fee table requirements are based on assumed rate of return, as form N–1A requirements for fee disclosure in general do not assume a specific rate of return.[96]

The Commission understands that the same types of fees and costs are disclosed through SEC-required disclosures, even if in a different format.[97] For example, § 4.24(i) requires a full and complete discussion of all management fees. Form N–1A, item 3 requires similar disclosure. The Commission is persuaded by the commenters that the information required by the SEC achieves substantially the same purposes as the break-even point analysis. The Commission has concluded that the disclosure required by the SEC is sufficient to communicate the fees and costs associated with a RIC that engages in derivatives. Therefore, the Commission has determined to deem the CPOs of RICs compliant with the requirements under § 4.24(d)(5) of the Commission's regulations contingent upon their compliance with the SEC RIC Rules.

g. Past Performance Disclosure

Section 4.24(n) requires CPOs to disclose past performance information in accordance with § 4.25. Section 4.25(a) requires various disclosures, including, but not limited to: aggregate gross capital subscriptions to the pool; the pool's current net asset value; the largest monthly draw-down during the most recent five calendar years and year-to-date; the worst peak-to-valley draw-down during the most recent five calendar years and year-to-date; and the annual and year-to-date rate of return for the pool for the most recent five calendar years and year-to-date, including a bar graph depicting such rates of return. Similar information is required for each account traded by the CPO or CTA on behalf of a client.

Section 4.25(c) states that when the offered pool has less than a three-year operating history, the CPO must disclose the past performance of each other pool it operates. By contrast, the SEC's regulations do not require RICs to disclose past performance for any fund other than the offered fund. Most of the other performance-related disclosures are similar between the two regulatory regimes. However, some information is presented in a different manner. For example, whereas § 4.25 requires disclosure of the pool's performance for the year-to-date and the most recent five calendar years, Item 4(b)(2)(iii) of Form N–1A requires disclosure of average annual total returns for the previous year, five years, and ten years (or the life of the fund, if shorter than five or ten years).

The Commission proposed to maintain the past performance disclosure requirements, but requested comment on the advisability of doing so. Most commenters suggested that the Commission exempt RICs from disclosing past performance information.[98] Some commenters claimed that the SEC generally does not permit disclosure of the past performance of funds other than the offered fund, and that the CFTC's requirement to do so would cause funds to be in a position of having to choose which regulator's rules to violate.[99]

Numerous commenters highlighted a footnote in the Proposal that said the Commission had had preliminary discussions with the SEC regarding past performance disclosures and that the SEC may consider no-action relief for dually-registered RIC/CPOs. These commenters argued that it would unreasonable for the CFTC to expect hundreds of funds (according to one commenter) to apply for no-action relief, stressing the inefficiencies and burdens for RICs and for the SEC to comply with such a volume of requests.[100] Some commenters noted that the SEC is under no obligation to grant such relief, and that even if it did, no-action letters are typically non-binding.[101] Other commenters noted that even if the SEC does grant no-action relief for this provision, such an action may create disparate treatment between RICs and RIC/CPOs that would confuse investors who are accustomed to the SEC's provisions on performance disclosure. These commenters further noted that the dual requirements may complicate the registration process for RICs subject to the dual disclosure requirement, which could operate to their competitive disadvantage.[102]

One commenter expressed concern that this provision does not accomplish the CFTC's stated objective of providing material information while reducing duplicative disclosure.[103] Another commenter suggested that funds with fewer than three years' performance should be required to disclose information only for other funds with substantially similar objectives and strategies that are managed by the same adviser.[104]

Other commenters disagreed. One commenter suggested that while allowing CPOs of RICs to show only the results of similar pools (as permitted by the SEC) would lessen the burden on such firms, it "would also create interpretive questions" and allow funds to exclude the performance of relevant pools.[105] Another commenter recommended that the Commission maintain the requirement, but limit the scope of the disclosure to include past performance information only for other commodity pools listed with NFA by the RIC/CPO. This commenter suggested that the Commission encourage the SEC to provide no-action relief and to do so on a "global" basis, as opposed to a case-by-case basis.[106]

Some commenters suggested that the CFTC exempt RICs from the requirement to disclose aggregate gross capital subscriptions.[107] One commenter stated that such a requirement is not practicable for open-ended RICs, which are publicly-offered.[108] Another commenter stated that the measurement "is meaningless to fund investors, as subscriptions are frequently offset . . . by redemptions."[109]

One commenter believed that the differences in how the charts required by SEC and CFTC regulations are calculated could result in an additional preparation burden for RICs and additional confusion for investors, and suggested that the CFTC harmonize this requirement to the SEC's disclosure. Similarly, the commenter suggested the Commission harmonize the different methodologies of the CFTC- and SEC-reporting requirements to avoid duplicative and confusing information. For example, the commenter noted that past performance disclosures are

[94] Dechert Letter.
[95] AXA Letter; NYCBA Letter.
[96] ICI Letter.
[97] *See* generally SEC form N–1A, Item 3.
[98] AXA Letter; ABA Letter; Dechert Letter; Katten Letter; IAA Letter; Fidelity Letter; NYCBA Letter; SIFMA AMG Letter.
[99] AXA Letter; Dechert Letter; Katten Letter; SIFMA AMG Letter; ICI Letter.
[100] Dechert Letter; IAA Letter; Fidelity Letter; SIFMA AMG Letter; ABA Letter.
[101] Dechert Letter; Fidelity Letter.
[102] ABA Letter; Katten Letter.
[103] Dechert Letter.
[104] ICI Letter.
[105] Steben Letter.
[106] NFA Letter, Campbell Letter.
[107] SIFMA AMG Letter, Dechert Letter.
[108] SIFMA AMG Letter.
[109] Dechert Letter.

required for different timeframes (the SEC requires 1, 5, and 10 year disclosure; the CFTC requires each of the most recent 5 years to be disclosed).[110]

After consideration, and in light of the comments received, the Commission has determined to deem CPOs of RICs with less than three years of performance history to be compliant with § 4.25(c), provided that the CPO disclose the performance of all accounts and pools that are managed by the CPO and that have investment objectives, policies, and strategies substantially similar to the offered pool.[111]

The requirements for disclosure of commodity pools' past performance exist because the Commission, drawing on its experience, believes they provide prospective participants with useful information. The markets for commodity interests are highly complex and require specialized knowledge to manage funds effectively. The Commission continues to believe that the presentation of past performance provides investors with information regarding the experience of a CPO of a relatively new pool. A prospective investor will, as a result of this requirement, be better able to assess the experience and expertise of the CPO as a result of this disclosure. As summarized by participants in the rulemaking process in which the Commission adopted § 4.25, while "past performance data alone are not directly predictive of future trading results, . . . past performance data provide information that is important in evaluating a contemplated pool offering or trading program. For example, patterns of volatility and other trading patterns in various market conditions may be evident." [112]

Although the SEC does not mandate the disclosure of the performance of other funds and accounts, guidance provided by the SEC's Division of Investment Management indicates that a RIC is permitted to show the performance of funds and accounts that are managed by the same investment adviser as the RIC and that have investment objectives, policies, and strategies substantially similar to those of the RIC.[113] Recognizing that the SEC approaches this issue differently, and would not allow the performance disclosures of each other pool the CPO operates, the Commission understands that the SEC's Division of Investment Management would permit a subset of that information to be disclosed. Notably, it would permit all the disclosure of past performance that is most germane to that of the offered pool and provide precisely the information that a prospective investor would need to evaluate the historical behavior of the markets and instruments in which the offered pool invests. As such, the Commission has made the judgment to confine this requirement for CPOs of RICs with less than three years operating history to disclose information concerning pools or accounts that are managed by the CPO and that have substantially similar investment objectives, policies, and strategies because it provides prospective participants with additional information regarding the historical performance of accounts and pools traded pursuant to the trading strategy used by the offered pool, and provides data regarding the experience of the CPO trading substantially similar instruments and trading strategies.

The Commission believes that this requirement appropriately addresses the Commission's concerns about ensuring that prospective participants have the information that the Commission believes is essential to making informed decisions, prior to investing in a commodity pool, while respecting the limitations on disclosure imposed by the SEC. CPOs of RICs with less than 3 years performance history will be required to identify which other accounts and pools have investment objectives, policies, and strategies substantially similar to those of the offered pool. In contrast to § 4.25 as applied to CPOs generally, the Commission's acceptance of substituted compliance for CPOs of RICs introduces a mildly subjective element that is otherwise absent under the regulation. The Commission believes that any such subjectivity is tightly constrained due to the guidance that SEC staff has provided in this area. The Commission believes that the result will be reasonably tailored to provide prospective participants with materially useful information that otherwise would not be mandatorily disclosed under the SEC's regulatory regime.[114]

Additionally, the Commission has determined to deem CPOs of RICs compliant with the remainder of § 4.25, which includes the requirement to disclose aggregate gross capital subscriptions, to the extent that the CPOs comply with applicable SEC Rules. The Commission has reached this decision after considering the requirements imposed by the SEC and concluding that the compliance obligations, with the limited exception noted above for CPOs of RICs with less than three years of performance history, generally achieve the same disclosure objective. For example, although the timeframes for performance disclosure differ, with the Commission requiring 5 years of performance, whereas the SEC requires up to 10 years performance, the Commission believes that the disclosure required by the SEC provides a reasonable means for ensuring effective disclosure of a pool's past performance to a prospective participant as the information provided under the SEC's regulatory regime includes that required under part 4 of the Commission's regulations. Additionally, the Commission recognizes the challenges that a continuously offered RIC might face in determining its aggregate gross capital subscriptions. It may not be possible for the CPO of a continuously offered RIC to make such a determination given the continually variable number of subscriptions and redemptions. Therefore, the Commission is deeming CPOs of RICs compliant with the requirements of § 4.25 subject to compliance with the regime set forth under SEC RIC Rules, with the exception of those pools which have a less than three year operating history, the CPO of which must make the additional disclosures as discussed supra.

h. Fee Disclosure

Section 4.24(i) requires CPOs to include in the Disclosure Document a complete description of each fee, commission, and other expense which the CPO knows has been incurred or expects to be incurred. This description must include management fees, brokerage fees and commissions, any fees and commissions paid for trading advice, fees incurred within investments in investee pools and

[110] *Id.*

[111] With respect to the commenter that suggested requiring the disclosure of other pools that trigger registration as a CPO with the Commission, the Commission is concerned that it may result in requiring the CPO of a RIC to disclose the performance of a pool or account that does not have investment objective, policies, and strategies substantially similar to those of offered pool, thereby causing the CPO of the RIC to violate the restrictions imposed by the SEC.

[112] 60 FR 38148 (July 25, 1995); *see also* 68 FR 42964 (July 21, 2003).

[113] *See*, e.g., ITT Hartford Mutual Funds (pub. avail. Feb. 7, 1997) (fund may include in marketing materials performance information for other funds managed by the same adviser with investment objectives, policies, and strategies substantially similar to those of the fund); Nicolas-Applegate Mutual Funds (pub. avail. Aug. 6, 1996) (fund may include in prospectus information for private accounts managed by the fund's adviser with investment objectives, policies, and strategies substantially similar to those of the fund).

[114] *See*, the Commission's discussion of costs and benefits, *infra*, regarding the costs associated with this disclosure requirement.

funds, incentive fees, any allocations paid out to the CPO, commissions or other benefits paid to any person in connection with soliciting participation in the pool, administrative fees and expenses, offering expenses, and clearance, exchange, and SRO fees, along with certain other fees as applicable.

Many of these fees are disclosed by RICs in SEC form N–1A. Item 3 of that form requires a table of fees to be presented. The Commission proposed to require any such expenses not included in the fee table in Item 3 of Form N–1A to be disclosed in the prospectus in addition to those fees and expenses required by both the CFTC and the SEC.

Commenters generally contended that the CFTC's requirement under § 4.24(i)(2)(ii) to disclose brokerage fees and commissions should not apply to RICs as such disclosures may be misleading and/or confusing for fund investors.[115] One commenter noted that if RICs decide that the inconsistent disclosures warrant changing existing practices, the process of separating out prospectuses would carry "inevitable initial and ongoing operational, legal, compliance, and marketing costs."[116] Another commenter stated that the SEC has determined its fee disclosure regime to be adequate and that the CFTC has not identified any reason why additional disclosure is necessary to protect investors. This commenter also noted that expected fees, required to be disclosed under § 4.24(i)(1), are predictive and could be misleading if projected expenses are more favorable than the actual expenses incurred.[117]

The Commission understands that the same types of fees and costs are disclosed through SEC-required disclosures, although perhaps in a different format, as discussed *supra*, with respect to the break-even information. The Commission, moreover, is persuaded by the commenters that the information required under its break-even point and table is not meaningfully different from what the SEC already requires. For example, the SEC-required disclosure permits brokerage fees to be included in the cost of securities, whereas the Commission requires such fees to be disclosed separately. In both cases, information regarding such fees is being provided to the investor. Moreover, item 21 of SEC form N–1A requires a discussion of brokerage commissions paid by the RIC during its three most recent fiscal years.[118] The Commission believes that the disclosure required by the SEC is sufficient to communicate the fees and costs associated with a RIC that engages in derivatives, notwithstanding the fact that the format is different from that generally prescribed by the Commission with respect to CPOs and CTAs. Therefore, the Commission has determined to deem the CPOs of RICs compliant with the requirements under § 4.24(d)(5) of the Commission's regulations, provided that they comply with the SEC's required disclosures.

i. Controlled Foreign Corporations (CFCs)

In the 2012 Final Rule, the Commission explained its position on the use of CFCs by RICs, stating that, although the Commission does not oppose the use of CFCs by RICs, it nevertheless believes that CFCs that fall within the statutory definition of commodity pool may necessitate the registration of a CPO.[119] As such, operators of such entities, whether or not the RIC that owns the CFC may be excluded under § 4.5, may be required to register as CPOs with the Commission.

As stated in the 2012 Final Rule, the Commission understands that a RIC may invest up to 25 percent of its assets in a CFC, which then engages in actively managed derivatives strategies, either on its own or under the direction of one or more CTAs.[120]

One commenter agreed with the Commission's position that RICs should be permitted to use CFCs under appropriate circumstances. This commenter further articulated their belief that in certain situations additional disclosures regarding CFCs may be necessary, as the relationship between a RIC and related CFCs is "significantly different than a typical fund-of-funds structure." The commenter suggested that the Commission clarify that the RIC's Disclosure Document must contain a full discussion of this relationship and the impact of the CFC on the pool/RIC, including on the performance of the pool/RIC.[121]

Another commenter noted that a CFC may constitute a major investee pool and, as such, the CPO of a RIC would have to include certain disclosures regarding the CFC in its Disclosure Document pursuant to the Commission's regulations. However, this commenter suggested the Commission require additional "extensive, particularized disclosure regarding [CFCs] used by investment companies" and claimed that "[s]uch information is needed . . . to help investors and regulators identify and understand the expenses . . . and risks" associated with CFCs.[122]

One commenter requested that the Commission exempt a CFC that is wholly owned by a RIC from the detailed disclosure and reporting requirements under part 4 because the only recipients of such information would be the RIC that owns the CFC.[123]

The Commission reaffirms its earlier statements in the 2012 Final Rule that RICs may continue to use CFCs and that such CFCs, depending on their investment activities, may fall within the statutory and regulatory definitions of "commodity pool."[124] The provisions of SEC forms N–1A and N–2 require a discussion of the investment strategies of the offered funds and the principal risk factors associated with investment in the fund.[125] The Commission understands that if a RIC is using a CFC to effectuate its investment strategy, the RIC is required to disclose in its prospectus filed with the SEC information about the RIC's investment in the CFC and the principal risks associated with the CFC investment, including those related to swaps and other commodity interests. Accordingly, the Commission has determined that, if the RIC provides full disclosure of material information regarding the activities of its CFC through its obligations to the SEC, the CFC will not be required to separately prepare a Disclosure Document that complies with part 4 of the Commission's regulations. Moreover, provided that the RIC consolidates the financial statements of the CFC with those of the RIC in the financial statements that are filed by the RIC with the NFA, the CFC will not be required to file separate financial statements.[126] Given the foregoing, the Commission does not believe that additional relief pertaining to CFCs is necessary.

C. Financial Reporting

a. Periodic Financial Statements

Section 4.22 requires that every CPO must periodically distribute to each

[115] ABA Letter; Dechert Letter; Katten Letter; SIFMA AMG Letter.

[116] ABA Letter.

[117] Dechert Letter.

[118] *See* SEC form N–1A, item 21.

[119] *See* 2012 Final Rule, *supra* note 6, 77 FR at 11260.

[120] *See* 2012 Final Rule, *supra* note 6, 77 FR 11252 (Feb. 24, 2012) for a discussion of CFCs and their use by RICs.

[121] NFA Letter.

[122] Steben Letter.

[123] SIFMA AMG Letter.

[124] *See* 2012 Final Rule, *supra* note 6, 77 FR at 11260.

[125] *See* Items, 4, 9, and 16(b) of SEC form N–1A; and Item 8 and 17 of SEC form N–2.

[126] 17 CFR 4.22(c)(8).

participant in each pool that it operates an Account Statement in the form and with the content prescribed therein. Further, § 4.22(b) requires that Account Statements must be distributed at least monthly for pools with net assets greater than $500,000 and at least quarterly for all other pools.

The '40 Act requires open-end RICs to sell and redeem their shares based on the current net asset values of those shares,[127] and these net asset values may be posted on the RIC's Web site or otherwise made available to investors. RICs are also required to furnish semi-annual and annual reports, including financial statements, to investors, as well as to file quarterly schedules of portfolio holdings and semi-annual and annual reports, including financial statements, with the SEC (which are publicly available to investors via the EDGAR system).[128]

The Commission proposed to exempt the CPO of any RIC from the distribution requirements of § 4.22, provided the Account Statements are readily accessible on the RIC's Web site. The Commission also proposed to exempt such entities from the requirement under § 4.26(b) to attach the Account Statements to the Disclosure Document, again provided such materials are readily accessible on the RIC's Web site. The Commission did not propose to alter the requirement that Account Statements be distributed at least monthly.

Commenters generally appreciated the proposed relief under § 4.12(c) but requested a broader exemption from the requirements in § 4.22(a)–(b), which require monthly statements to be prepared and provided to participants.[129] Alternatively, others suggested that the Commission allow RICs to file quarterly statements, rather than monthly, as such a requirement is more in line with the SEC's requirements under the federal securities laws.[130] One commenter suggested that the Commission permit RICs to satisfy the requirements of § 4.22(a)–(b) by posting on its public Web site all reports to shareholders in compliance with and as required by SEC RIC Rules.[131] Some commenters noted that RIC investors have ready access to daily performance information, which, according to one commenter, achieves the "key purpose of the Account Statement" on a more current basis.[132] Some commenters noted that there are significant similarities between the publicly available disclosures required by the SEC and the information required in § 4.22, making the CFTC's requirement redundant.[133]

Several commenters contended that requiring Account Statements would create a substantial burden on RICs that would ultimately be passed on to shareholders without any corresponding benefit.[134] Another commenter was concerned that CPOs will now be required to create and maintain an online reporting regime to provide information that is already available to investors.[135] One commenter recommended that the Commission change the number of days that a CPO registered under § 4.7 has to prepare and distribute quarterly statements from 30 days to 45 days.[136]

The Commission has been persuaded by commenters and has concluded that providing relief to CPOs of RICs from the requirement to send monthly financial statements is appropriate, provided that the RIC's current net asset value per share is available to investors, and provided that the RIC furnishes semi-annual and annual reports to investors and files periodic reports with the SEC as required by the SEC. When current net asset value per share is available to investors, coupled with more detailed periodic reports as described above, the Commission believes that the decision not to require monthly statements would not reduce the transparency available to investors. Importantly, a fund investor could calculate his/her position in the fund using the current net asset value per share.

The Commission does not believe that its interest in ensuring that financial information is provided to pool participants is negatively impacted if such information is made available through the Web site of the RIC or its designee. This is consistent with § 4.1(c) of the Commission's regulations, wherein the Commission permits the distribution of information to participants through electronic means.[137] In accordance with the permitted use of electronic distribution, the Commission does not believe that electronic delivery meaningfully changes the information available to participants and may, in fact, make the information more readily accessible to participants and the public in general. The Commission also believes that such relief will eliminate the costs of preparing monthly financial statements and thereby eliminate any marginal impact on CPOs of RICs related to compliance with § 4.22.

D. Books and Records

a. Location of Records

Sections 4.23 and 4.7(b)(4) require that all CPOs maintain full books and records at the main business office of the CPO. Such books and records must include the following: a detailed and itemized daily record of each commodity interest transaction of the pool; all receipts and disbursements of money, securities, and other property; a participant ledger; copies of each confirmation of a commodity interest transaction; and other relevant records.

The records of RICs are often maintained by third parties, such as administrators. Because of this, the Commission proposed extending the same type of relief currently available to ETFs through § 4.23 to RICs. The relief in § 4.23 allows maintenance of records at certain third party sites, such as those of an administrator or custodian.

Commenters suggested that the Commission extend the proposed relief to include not only RICs but all CPOs and CTAs, including private pools or funds; these commenters claimed such an extension would be more consistent with prevailing technologies, current market practices, and SEC requirements.[138] Commenters also suggested that the Commission remove the limitation on which entities are permitted to maintain books and records, because SEC rules permit a wider range of entities to do so.[139]

The Commission understands the current practice for RICs, as well as many other CPOs, to maintain their books and records with a third party vendor, or other such record-keeper, to be part of efficient management practices regarding such records.[140] Such practice allows the CPO to avail itself of the lower cost and increased record security of a third party vendor, as such vendors often specialize in such services. The Commission

[127] 15 U.S.C. 80a–22; 17 CFR 270.2a–4; 17 CFR 270.22c–1(a).

[128] *See* 17 CFR 270.30b1–5 (quarterly schedule of portfolio holdings on Form N–Q); 17 CFR 270.30b2–1 (semi-annual and annual reports on Form N–CSR); 17 CFR 270.30e–1 (semi-annual and annual reports to shareholders).

[129] AXA Letter; SIFMA AMG Letter; ICI Letter; ABA Letter.

[130] NFA Letter; ABA Letter.

[131] Katten Letter.

[132] NFA Letter; SIFMA AMG Letter.

[133] Katten Letter; NYCBA Letter.

[134] SIFMA AMG Letter; NYCBA Letter; AXA Letter.

[135] AII Letter.

[136] MFA Letter.

[137] 17 CFR 4.1(c).

[138] MFA Letter; IAA Letter.

[139] MFA Letter; IAA Letter; Dechert Letter; ICI Letter; SIFMA AMG Letter.

[140] See, 17 CFR 270.31a–3 (person maintaining required records on behalf of a RIC must agree that records are the property of the RIC).

acknowledges that its requirement to keep such books and records at the main business address of a CPO is rooted in the timely and certain access of that data. However, to the extent that such data is readily accessible to a CPO, the Commission believes that the requirement that such data be maintained at the main business address of a CPO is similarly met so long as timely and complete access to that data is available. Further, as suggested by the comments, the Commission believes that the advantages of such recordkeeping practices are applicable to all CPOs. Accordingly, the Commission has determined that so long as at the time that such CPO registers with the Commission, or delegates its recordkeeping obligations, whichever is later, the CPO files a statement with the Commission describing the delegated record keeper, and maintains timely access to those records in such manner as set forth by the Commission, that CPO will be permitted to utilize the services of third-parties with respect to the maintenance of books and records.

b. Other Recordkeeping Obligations

Section 4.23 also requires that a CPO's books and records be made available to participants for inspection and/or copying at the request of the participant.[141] The Commission did not propose altering this requirement. The SEC does not have a comparable requirement. Indeed, disclosure of non-public information to some, but not all, participants is prohibited where inconsistent with the antifraud provisions of the federal securities laws and the fund's or adviser's fiduciary duties ("selective disclosure").[142]

Additionally, § 4.23(a)(4) requires a ledger (or other record) to be kept for each participant in the pool that shows the participant's name, address, and all funds received from or distributed to the participant.

One commenter noted that the investor access provision is inconsistent with SEC regulations, which the commenter claimed are sufficient to provide investors with information.[143] Some commenters suggested the Commission exempt RICs from the requirement to make available a CPO's books and records at the request of an investor.[144] These commenters noted the possibility of investors accessing trading and position information to use in trading against the pool/fund, leading to unfair competition and front-running.

Commenters were concerned with the ledger requirement in § 4.23(a)(4) because they noted that most shares are held in omnibus accounts or through intermediaries and that transfer agents typically keep records of investors.[145] These commenters requested clarification that a transfer agent's maintenance of records and/or a list of relevant intermediaries would be deemed to satisfy the information requirements regarding pool participants under § 4.23(a)(4).

The Commission recognizes the concerns that, if a participant were to inspect such books and records of a pool, SEC requirements may then compel the pool to publicly disclose such information to avoid prohibitions against selective disclosure. Even in the absence of wide disclosure of such positions, which would at a minimum require substantial effort to compile and distribute such information to all fund participants at unplanned intervals, disclosure of transaction level data on a real time or near real-time basis to even a single participant may make such a pool vulnerable to front-running or market manipulation. Accordingly, to remove these risks, a registered CPO that operates a RIC will not be required to make its records available for inspection and copying.

The Commission recognizes that the practice of many RICs to hold account shares in an omnibus account, with such records of participant information being kept by a transfer agent or financial intermediary, such as a broker-dealer or bank, would make the requirement that the CPO keep custody of such records both duplicative and unduly burdensome on the CPO of a RIC. Because a subsidiary ledger of largely the form and substance required by the Commission is kept by those transfer agents and financial intermediaries, the Commission agrees that in such instances, the maintenance of these records by a transfer agent or financial intermediary, in such form that complies with that as set forth by the Commission, shall satisfy the requirement of § 4.23(a)(4).

The Commission has also determined to amend § 4.23 to permit all CPOs to use third-party service providers to maintain their books and records. The Commission believes that expansion of the relief previously limited to exchange traded funds appropriately recognizes technological advances in recordkeeping and the ability to make books and records readily available to regulatory agencies. The Commission will continue to require CPOs of RICs to file with the NFA (1) a notice providing information about the third-party service provider, and (2) a statement from the service provider agreeing to maintain the pool's books and records consistent with the Commission's regulations. This requirement is identical to the notices previously required under § 4.12(c)(iii). Therefore, the Commission is adopting final amendments to § 4.23 permitting all registered CPOs to use third party service providers to maintain their books and records.

E. Broader Applicability

The Commission proposed harmonization of compliance obligations for CPOs of RICs only. The Commission did not propose extending relief to other CPOs or other SEC-registered entities, such as investment advisers to private funds. However, the Commission did request comment on whether it should consider applying any of the harmonization provisions to operators of pools that are not RICs.

One commenter supported the Commission's proposal to amend § 4.12(c) to extend relief to RICs similar to the relief granted to ETFs, as well as the Commission's proposal to extend the same relief to operators of all publicly offered pools, regardless of whether they are traded on a securities exchange.[146] Several commenters requested the Commission extend relief under 4.12(c) to privately offered pools.[147]

The Commission believes that publicly offered pools that are not traded on an exchange should be afforded the same relief as ETFs. Both are subject to regulation under the Securities Act, and therefore, required to comply with certain disclosure and reporting obligations. Accordingly, the Commission adopts as final the proposed extension of relief under § 4.12(c) to all publicly offered pools, regardless of whether such pools are traded on an exchange.

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[141] Certain confidential or proprietary information, including participants' personal information and subscription information as well as the records of the CPO's personal investments, are not required to be made available for inspection by pool participants.

[142] See SEC Regulation FD (17 CFR 243.100–103) (with respect to closed-end RICs); Items 9(d) and 16(f) of SEC form N–1A (open-end RICs required to disclose policies and procedures with respect to disclosure of portfolio securities and ongoing arrangements to make available information about portfolio securities.

[143] ABA Letter.

[144] Katten Letter; ABA Letter; ICI Letter; AII Letter.

[145] Dechert Letter; Katten Letter; SIFMA AMG Letter.

[146] NFA Letter.

[147] MFA Letter; IAA Letter; SIFMA AMG Letter; Campbell Letter; Steben Letter.

Unlike publicly offered pools, privately offered pools avail themselves of an exemption from registration under the Securities Act.[148] Ownership interests in privately offered pools are not subject to the same types of regulatory obligations under the securities laws as publicly offered pools. As a result, CPOs of privately offered pools are not subject to the prospect of being required to comply with two different compliance regimes. Therefore, the Commission will not extend the full scope of the exemptions provided under § 4.12(c) to all CPOs. However, the Commission has determined to liberalize the third party recordkeeping and document distribution requirements under part 4 of the Commission's regulations, as discussed supra, for all CPOs.

With respect to the specific compliance obligations under part 4, one commenter requested that the Commission extend the relief from the Disclosure Document delivery and acknowledgment requirements in § 4.21 to any CPO of a private pool/fund, so long as the pool/fund has an investment advisor registered with the SEC and is either registered under § 4.7 or would have been exempt under rescinded § 4.13(a)(4).[149] The commenter noted that because the participants in these private pools would be sophisticated investors, the Commission should not deny these pools the same relief granted to CPOs of RICs, whose investors are less sophisticated retail investors.[150]

The Commission has determined to rescind the signed acknowledgement requirement under § 4.21(b) for all registered CPOs. Through its expansion of § 4.12(c) to exempt all publicly offered funds, the Commission has recognized that publicly offered pools that are not exchange traded are similarly situated with respect to the requirements under § 4.21 as ETFs. The Commission believes that because participants in privately offered pools are not retail participants but are sophisticated persons, the concerns underlying the signed-acknowledgment requirement are not present. Moreover, the elimination of this requirement would align the Commission's requirements regarding the offering of ownership interests in commodity pools with the requirements imposed on the offerings of interests in other types of funds. Therefore, the Commission is rescinding the signed acknowledgement requirement under § 4.21(b) for all CPOs.

One commenter requested that the Commission amend § 4.7(b) and § 4.13(a)(3)[151] in response to the Jumpstart Our Business Startups Act ("JOBS Act"), which eliminates the prohibition on general solicitation in connection with private funds.[152] The JOBS Act amends certain sections of the Securities Act, but does not change similar provisions in the CEA or under part 4 of the Commission's regulations. The commenter contended that this disparity will create a situation in which private funds may market to the public but private pools may not.

The Commission recognizes that there may be some disparity between the treatment of privately offered funds under the securities laws and the Commission's regulations; however, this issue was not included in the Proposal and was not subject to notice and comment. Therefore, the Commission does not believe that this final rule is the appropriate mechanism for addressing the difference between the two regimes. The Commission has directed Commission staff to evaluate the issue and make recommendations to the Commission for future action.

F. Effective Dates and Implementation

The harmonized compliance obligations for CPOs of RICs under § 4.12, except for § 4.12(c)(3)(i), will become effective upon publication in the **Federal Register**.

Section 4.12(c)(3)(i) will become effective 30 days after publication in the **Federal Register**. Compliance will be required with the conditions adopted herein in § 4.12(c)(3)(i) for open-end RICs beginning when a RIC files with the SEC an initial registration statement on form N–1A or, for an existing RIC, its first post-effective amendment that is an annual update to an effective registration statement on form N–1A. For CPOs of closed-end RICs, compliance will be required when the closed-end RIC files an initial registration statement with the SEC, or, for existing closed-end RICs, when the closed-end RIC is required to update its registration statement. Consistent with the Commission's statements in the 2012 Final Rule, CPOs of RICs must begin to comply with § 4.27, which implements Commission forms CPO–PQR and CTA–PR, 60 days following the effective date of this rulemaking.[153] Accordingly, initial reporting on forms CPO–PQR for CPOs of RICs will begin October 21, 2013.[154] Section 4.21 will become effective upon publication in the **Federal Register**. With respect to the amendments to §§ 4.7(b)(4), 4.23, 4.26, and 4.36 that are applicable to all registered CPOs, these amendments will become effective 30 days after publication in the **Federal Register** and CPOs may comply upon the effective date.

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA.[155] 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 control number from the Office of Management and Budget ("OMB"). This final release affects OMB Control Numbers 3038–0023 and 3038–0005 to reflect the obligations associated with the registration of new CPOs that were previously excluded from registration under § 4.5. Specifically, this final release is amending Collection 3038–0005 to accommodate the modified compliance obligations under part 4 of the Commission's regulations.

a. Estimated Number of Affected Entities

In the Proposal, the Commission derived the number of estimated entities affected and the number of burden hours associated with this proposal through the use of statistical analysis. According to the single and limited source of data available to the Commission, in 2010, there were 669 sponsors of 9,719 registered investment companies, including mutual funds, closed end funds, exchange traded funds, and unit investment trusts.[156] In the comment letter submitted by the Investment Company Institute ("ICI") in

[148] *See*, e.g., 17 CFR 230.501 ("Reg. D); 15 U.S.C. 77d ("Section 4(2)").

[149] Commission Regulation 4.7 and former Regulation 4.13(a)(4) provide for an exemption of certain Part 4 requirements, or an exemption from registration as a CPO, respectively, for, among other things, operating a pool of which all the participants therein are qualified eligible persons. 17 CFR 4.7 and 17 CFR 4.13(a)(4). *See* 2012 Final Rule, *supra* note 6, 77 FR 11252 (Feb. 24, 2012); correction 77 FR 17328 (March 26, 2012).

[150] SIFMA AMG Letter.

[151] *See supra* footnote 149.

[152] Comment letter from Managed Futures Association (July 17, 2012) (MFA II Letter).

[153] *See* 2012 Final Rule, *supra* note 6, 77 FR 11252 (Feb. 24, 2012); correction 77 FR 17328 (March 26, 2012).

[154] The instructions for form CPO–PQR specify different dates by which CPOs must file the form, depending on the amount of assets under management by the pool operator. 77 FR at 11288. CTAs must file form CTA–PR annually. 77 FR at 11339.

[155] *See* 44 U.S.C. 3501 *et seq.*

[156] *See* 2011 Investment Company Fact Book, Chap. 1 and Data Tables, Investment Company Institute (2011), available at *http://www.icifactbook.org/*.

response to the Commission's proposed amendments to § 4.5, the ICI stated that it surveyed its membership and 13 sponsors responded representing 2,111 registered investment companies. Of those 2,111 registered investment companies, the 13 sponsors estimated that 485 would trigger registration and compliance obligations under § 4.5 as amended. This constituted approximately 23% of the reported registered investment companies.

The Commission then deducted the 2,111 registered investment companies discussed in the ICI comment letter from the 9,719 entities comprising the universe of registered investment companies, and deducted the 13 sponsors surveyed by the ICI from the universe of 669 fund sponsors to arrive at a balance of 656 fund sponsors operating 7,608 registered investment companies. This resulted, for the calculated remainder, in an average of 11.6 registered investment companies being offered per sponsor.

The Commission then calculated 23% of the 7,608 registered investment companies not covered by the ICI survey, resulting in 1,750 additional registered investment companies that the Commission would expect to trigger registration under amended § 4.5. The Commission then divided this number by the previously calculated average number of registered investment companies operated per sponsor to which it added the 13 sponsors from the ICI survey to reach 164 sponsors expected to be required to register under amended § 4.5. Because the Commission could not state with certainty that only 164 entities would be required to register the Commission indicated that the number of sponsors or advisors required to register were somewhere between 164 and 669 entities. For PRA purposes, the Commission concluded that it was appropriate to use the midpoint between the outer bounds of the range, which was 416 entities.

Pursuant to the request for comments on the Proposal, the Investment Company Institute ("ICI") submitted a comment letter in response which provided additional and differing information that it obtained through a further survey of its membership.[157] In its letter, the ICI stated that in its return, 42 advisers reported operating 4,188 funds, which constituted 43 percent of the universe of RICs.[158] Therefore, the total universe of RICs can be calculated to equal 9,740.

The ICI further stated that of these 42 advisers, 33 stated that they operated 551 funds that would trigger registration.[159] Therefore, according to the ICI's data, 13 percent of the surveyed funds would trigger registration of their operators.[160] Applying this percentage to the total universe of RICs less the 4188 surveyed RICs, results in an estimated 5552 non-surveyed RICs and an estimated total of 722 non-surveyed RICs with operators required to register.[161] The total number of surveyed and non-surveyed RICs with operators required to register is approximately 1,266.[162]

As stated above, the ICI also noted that 33 advisers would be required to register as CPOs due to the activities of 551 RICs.[163] According to the 2012 ICI Fact Book, there were 713 advisers to RICs in 2011.[164] The Commission deducted the 42 surveyed advisers from the total universe of 713 advisers to find a total of 671 non-surveyed advisers. When the Commission compared the number of non-surveyed RICs with the number of non-surveyed advisers, the Commission determined that each adviser advises an average of 8 RICs. The Commission then applied the average of 8 RICs per adviser to the 722 estimated number of non-surveyed RICs required to register, and obtained an estimate of 90 non-surveyed advisers being required to register. The Commission then added the 33 surveyed advisers to its estimate, and determined that an estimated 123 advisers may be required to register. Because the Commission cannot state with certainty that only 123 entities would be required to register, the Commission believes that the number of sponsors or advisors required to register to be somewhere between 123 and 713 entities, the midpoint of which is 418 entities.

b. OMB Control Number 3038–0023

On February 24, 2012, the Commission finalized amendments to Collection 3038–0023, titled "Part 3—Registration," to allow for an increase in response hours for the rulemaking resulting from the amendments to § 4.5 that the Commission recently adopted.[165] Collection 3038–0023 affects part 3 of the Commission's regulations that concern registration requirements. The Commission amended existing Collection 3038–0023 to reflect the obligations associated with the registration of new entrants, *i.e.*, CPOs that were previously exempt from registration under § 4.5 that had not previously been required to register.[166] Because the registration requirements are in all respects the same as for current registrants, the collection was amended only insofar as it concerns the estimated increase in the number of respondents and the corresponding estimated annual burden. These burdens were associated with the 2012 Final Rule amending § 4.5, which was published in the **Federal Register** on February 24, 2012. Responses to this collection of information are mandatory. The total burden associated with registration including the registration of operators of RICs was as follows:

Estimated number of respondents: 75,425.

Annual responses by each respondent: 75,932.

Estimated average hours per response: 0.09.

Annual reporting burden: 6,833.9.

In the Proposal, the Commission published a proposed amendment to Collection 3038–0023 that inadvertently reflected an additional amendment to the collection arising from the registration of additional CPOs that were previously excluded from the definition of CPO under § 4.5.[167] As stated above, the Commission amended existing Collection 3038–0023 in the 2012 Final Rule to reflect the obligations associated with the registration of new CPOs that were previously excluded from registration under § 4.5. Thus, these entities were already included in the Commission's final amendment to Collection 3038–0023 associated with the 2012 Final Rule, and therefore, the additional amendments to Collection 3038–0023 in the Proposal resulted in those entities being erroneously double counted. Accordingly, the burden hours previously estimated for Collection 3038–0023 in the 2012 Final Rule that amended § 4.5 and the estimates for this collection remain unchanged from the 2012 Final Rule.

c. OMB Control Number 3038–0005

Also, on February 24, 2012, the 2012 Final Rule amended Collection 3038–0005 to allow for an increase in

[157] ICI Letter.

[158] *Id.*

[159] *Id.*

[160] Percentage obtained by dividing 551 by 4,188 surveyed RICs.

[161] Total of non-surveyed RICs subject to registration obtained by multiplying 5552 non-surveyed RICs by .13.

[162] Total obtained by multiplying 9740 by .13.

[163] ICI Letter.

[164] *See* 2012 Investment Company Fact Book at 13, available at *http://www.icifactbook.org/2012_factbook.pdf.*

[165] *See* 2012 Final Rule, *supra* note 6, 77 FR at 11272.

[166] *See* 2012 Final Rule, *supra* note 6, 77 FR at 11273.

[167] *See* Proposal, *supra* note 23, 77 FR at 1349. The Proposal stated that there were 75,841 estimated number of respondents, 76,350 annual responses by each respondent and 6,871.6 annual reporting burden.

response hours for the rulemaking resulting from the amendments to § 4.5.[168] Collection 3038–0005 affects part 4 of the Commission's regulations that concern compliance obligations of CPOs and CTAs, and the circumstances under which they may be exempted or excluded from registration. The estimated average time spent per response was not altered in the 2012 Final Rule; however, adjustments were made to the collection to account for the new burden expected under the rulemaking. The total burden associated with Collection 3038–0005, in the aggregate, was as follows:

Estimated number of respondents: 43,168.

Annual responses for all respondents: 61,868.

Estimated average hours per response: 8.77.

Annual reporting burden: 257,635.8.

In the Proposal, the Commission proposed changes to part 4 that were designed to better harmonize the Commission's compliance obligations for CPOs and minimize the burden imposed on those dually-regulated by the Commission and the SEC while still enabling the Commission to fulfill its regulatory goals.[169] The Proposal was designed to, where possible, minimize the regulatory burden on these entities with respect to disclosure, annual and periodic reporting to participants and the Commission, recordkeeping requirements, and ensure that requirements among the SEC and CFTC did not conflict such that compliance with one regime would cause a violation of another. With respect to the PRA, the Proposal increased the number of estimated entities that would be subject to the compliance obligations of CPOs and CTAs,[170] which are part of Collection 3038–0005.[171] The Proposal specifically added the following burden with respect to compliance obligations other than Form CPO–PQR:

Estimated number of respondents: 416.

Annual responses by each respondent: 5.

Estimated average hours per response: 2.

Annual reporting burden: 4160.

As further discussed below, the Commission in this final release is amending Collection 3038–0005 to accommodate the modified compliance obligations under part 4 of the Commission's regulations resulting from these revisions. The title for this collection is "Part 4—Commodity Pool Operators and Commodity Trading Advisors" (OMB Control number 3038–0005). Responses to this collection of information will be mandatory. The new total burden associated with Collection 3038–0005, in the aggregate, including the burden imposed by regulations that are not being amended by this rulemaking, is as follows:

Estimated number of respondents: 49,008.

Annual responses for all respondents: 69,382.

Estimated average hours per response: 3.99.[172]

Annual reporting burden: 276,540.3.[173]

The new total burden associated with Collection 3038–0005, as a result of the amendments adopted in this rulemaking, is as follows:

Estimated number of respondents: 5,894.

Annual responses for all respondents: 7,694.

Estimated average hours per response: 2.66.[174]

Annual reporting burden: 20,464.5

The Commission will protect proprietary information according to the Freedom of Information Act ("FOIA") and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market position of any person and trade secrets or names of customers."[175] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[176]

d. Changes Resulting From Harmonization and Additional Information Provided by CPOs and CTAs

1. OMB Control Number 3038–0023

This rule does not impact the burden hours previously estimated for Collection 3038–0023 in the 2012 Final Rule that amended § 4.5 and the estimates for this collection have not been changed by this rule.

2. OMB Control Number 3038–0005

The Commission is amending Collection 3038–0005 to increase the estimated total number of respondents, total annual responses for all respondents, and annual reporting burden from the estimates that appeared in the Proposal. These amendments are in response to comments that the Commission received regarding the burdens imposed by the Proposal and also reflect the differences between the Proposal and the final rule. Thus, the new total burden in the 2012 Final Rule associated with Collection 3038–0005, listed in the aggregate above, has increased to account for the burdens associated with the various information collections in this final rule, as discussed below.

i. Amendments to Timeframe for Updating Disclosure Documents

In this release, the Commission is finalizing the collection of information regarding the frequency with which CPOs and CTAs must update their Disclosure Documents under §§ 4.26 and 4.36, respectively. While the total annual reporting burden has increased to account for the total annual reporting by CPOs for the various information collections in this final release, the Commission believes that the amendments to §§ 4.26 and 4.36 will result in a reduction of the burden on CPOs and CTAs.[177] The Commission estimates the burden associated with the

[168] *See* 2012 Final Rule, *supra* note 6, 77 FR at 11272.

[169] The Commission issued its proposal under the authority of §§ 4m, 4n, and 8a(5) of the CEA. 7 U.S.C. 6m, 6n, and 12a(5).

[170] *See* Proposal, *supra* note 23, 77 FR at 11349, finding that 416 entities would be required to register under amended § 4.5.

[171] *See* Proposal, *supra* note 23, 77 FR at 11349, which, to account for the increased number of entities, proposed that the total burden associated with Collection 3038–0005, in the aggregate, including the burden imposed by regulations that were not proposed to be amended by that rulemaking, was expected to be, as follows:

Estimated number of respondents: 44,142.

Annual responses by each respondent: 62,121.

Estimated average hours per response: 4.22.

Annual reporting burden: 262,347.8.

[172] The Commission rounded the average hours per response to the second decimal place for ease of presentation.

[173] This total estimate for Collection 3038–0005, in the aggregate, has been increased from the Proposal to accurately reflect the average under Collection 3038–0005. While the total annual reporting burden has increased, the total annual reporting burden reflects the decreased burden associated with the preparation of Disclosure Documents by CPOs under the amendments to §§ 4.26 and 4.36.

[174] The Commission rounded the average hours per response to the second decimal place for ease of presentation.

[175] *See* 7 U.S.C. 12.

[176] *See* 5 U.S.C. 552a.

[177] To facilitate compliance with part 4 requirements for CPOs of RICs, the Commission amended § 4.26 and § 4.36 to extend the period that CPOs and CTAs may use Disclosure Documents from nine months to twelve months from the date of the document. Section 4.26(a)(2) in this final release now provides that no commodity pool operator may use a Disclosure Document or profile document dated more than twelve months prior to the date of its use. Section 4.36(b) provides that no commodity trading advisor may use a Disclosure Document dated more than twelve months prior to the date of its use.

amendments to §§ 4.26 and 4.36 to be as follows:

Section 4.26:

Estimated number of respondents: 160.

Annual responses by each respondent: 1.8.

Estimated average hours per response: 3.25

Total Annual reporting burden hours: 936.

Section 4.36:

Estimated number of respondents: 450.

Annual responses by each respondent: 1.

Estimated average hours per response: 1.85.

Total Annual reporting burden hours: 832.5.

ii. Past Performance for Pools With Less Than Three Years Performance

The Commission is adopting a rule in § 4.12(c) of this release that would require operators of RICs with less than three years performance history to disclose the performance of all pools and accounts that are managed by the CPO and that have investment objectives, policies, and strategies substantially similar to those of the offered pool.[178] Not all RICs will fall into this category and therefore, not all RICs will be subject to this disclosure requirement.

Based on information provided by the ICI in its comment letter, of the 551 RICs in the survey that would trigger registration of their advisor, 159 of those RICs had less than three years operating history.[179] This constitutes approximately 30 percent of the RICs in the survey whose CPOs would not be excluded under § 4.5. The RICs with less than three years operating history that would require registration in the ICI survey were operated by 29 of the 33 advisers that expected to register, which constitutes 88 percent of the surveyed sponsors expecting to register. Applying these percentages to the Commission's estimated number of 418 sponsors required to register, the Commission expects approximately 368 pool operators to be subject to the disclosure requirements for substantially similar accounts and funds with respect to 380 pools. The Commission is not aware of any source of data to assist it in estimating the number of operators of RICs with substantially similar pools or accounts or to assist in estimating the number of those substantially similar pools or accounts that do not independently have regulatory obligations requiring the preparation of past performance data. To be conservative, therefore, the Commission will assume that all operators of RICs with less than three years operating history will have multiple pools or accounts that are substantially similar in all material respects and that such substantially similar pools or accounts do not have separate compliance obligations requiring preparation of past performance information.

The ICI, in its comment letter, estimated that costs associated with prior performance disclosure required under the Proposal for funds with less than a three year operating history would amount to 34 hours per fund initially, and 25.5 hours per fund each year in ongoing compliance requirements.[180] The ICI's estimates are based on the requirement in the Proposal to include past performance information for all other funds operated by the sponsor of the fund with less than a three year operating history. As noted supra, the Commission has altered this provision to require disclosure of only those funds and accounts that are substantially similar in all material respects to the fund with less than a three year operating history. In so doing, the Commission believes that it has significantly reduced the requirements regarding past performance disclosure. As such, the Commission believes it can reasonably reduce the number of hours required both initially and in ongoing compliance. The Commission anticipates initial and ongoing cost of approximately 15 hours per fund.[181] The Commission believes that 15 hours is a reasonable estimate for the preparation of past performance information for a substantially similar pool or account. The total burden associated with the past performance assessment and disclosure is:

Estimated number of respondents: 368.

Annual responses by each respondent: 1.

Estimated average hours per response: 15.

Total Annual reporting burden hours: 5,520.

iii. Notice To Claim Substituted Compliance

This final rule requires a notice to be filed for operators of RICs to claim relief under revised § 4.12(d) to enable the Commission to know which entities are claiming this relief.[182] The notice is effective upon submission and must only be filed once per pool. The Commission estimates the burden associated with this filing to be as follows:

Estimated number of respondents: 418.

Annual responses by each respondent: 3.

Estimated average hours per response: 2.

Total Annual reporting burden hours: 2,508.

The Commission does not believe that the requirement that operators of RICs discuss the risks associated with the derivative activities of the operated pools as adopted by this final rule imposes a burden beyond that already imposed by the Securities and Exchange Commission through SEC forms N–1A and N–2.[183]

iv. Filing Annual Financial Statements by CPOs of RICs

The final rule requires that operators of RICs file annual financial statements with the NFA, pursuant to the terms of § 4.22(c),[184] which is applicable to all CPOs. It permits operators of RICs to file the same financial statements that it prepares for its compliance obligations with the SEC. The Commission anticipates that the additional requirement imposed by the rule in § 4.22(c) necessitates only addressing any potential formatting changes—i.e. making sure the document is in PDF form as required by NFA—and uploading the document via NFA's Easy File system (to which advisers should already have access by virtue of their registration). Thus, the Commission anticipates at most 2 hours per fund per

[178] Section 4.12(c)(3)(i) states that "The commodity pool operator of a pool whose units of participation meet the criteria of paragraph (c)(1)(ii) of this section may claim the following relief: (i) The pool operator of an offered pool will be exempt from the requirements of §§ 4.21, 4.24, 4.25, and 4.26; *Provided, that* (A) The pool operator of an offered pool with less than a three-year operating history discloses the performance of all accounts and pools that are managed by the same pool operator and that have investment objectives, policies, and strategies substantially similar to those of the offered pool; . . ."

[179] ICI Letter.

[180] ICI Letter.

[181] The burden estimate assumes that all RICs with less than three years performance are newly formed and have no performance history, whereas some of these RICs likely have anywhere from no past performance to just less than three full years. Therefore, the Commission believes that this calculation overestimates the ongoing burden to these CPOs.

[182] Section4.12(d)(1)(iv) requires pool operators to specify the relief sought under paragraph (b)(2), (c)(2), or (c)(3) of this section, as the case may be.

[183] *See* Items, 4, 9, and 16(b) of Form N–1A; and Item 8 and 17 of Form N–2.

[184] Section 4.22(c) has not been amended by this rule. The information collection is being amended only to reflect the increase in the numbers of new CPOs registering.

sponsor. With respect to the filing of annual financial statements by operators of RICs with the NFA, the Commission estimates the burden to be as follows:

Estimated number of respondents: 418.

Annual responses by each respondent: 3.

Estimated average hours per response: 2.

Total Annual reporting burden hours: 2,508.

v. Notice of Use of Third-Party Record Keepers

The final rule adopts amendments to §§ 4.7(b)(4) and 4.23 to permit the use of third-party recordkeepers by any CPO that files a notice with NFA. The estimated number of respondents is derived from the estimates finalized as part of the 2012 Final Rule adopting amendments to § 4.5 and § 4.13, and reflects the additional registrants expected due to the changes in those rules. Because the Commission cannot be sure how many CPOs will use third-party service providers, the Commission estimates that all CPOs will take advantage of the amendments to the record-keeping requirements under § 4.23 and § 4.7.[185] With respect to the filing of the notice under revised § 4.23 to permit the use of third-party recordkeepers, the Commission estimates the burden to be as follows:

For CPOs of RICs subject to § 4.23:

Estimated number of respondents: 418.

Annual responses by each respondent: 1.

Estimated average hours per response: 2.

Total Annual reporting burden: 836.

For all other CPOs subject to § 4.23:

Estimated number of respondents: 160.

Annual responses by each respondent: 1.

Estimated average hours per response: 2.

Total Annual reporting burden: 320.

With respect to the filing of the notice under revised § 4.7(b)(4) to permit the use of third-party recordkeepers, the Commission estimates the burden to be as follows:

Estimated number of respondents: 3,502.

Annual responses by each respondent: 1.

Estimated average hours per response: 2.

Total Annual reporting burden: 7,004.

vi. Compliance With Form CPO–PQR by CPOs of RICs

CPOs of RICs were not required to comply with its filing obligations under § 4.27 or file form CPO–PQR until the finalization of this rulemaking. The reporting obligations for CPOs of RICs with respect to form CPO–PQR under the PRA and the costs and benefits were addressed in the 2012 Final Rule,[186] and restated in the Proposal only for informational purposes.[187] To the extent that this rule does not impact the burden hours previously estimated in the 2012 Final Rule for Form CPO–PQR, the estimates for Collection 3038–0005 associated with form CPO–PQR have not been changed by this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[188] requires that agencies, in proposing rules, consider the impact of those rules on small entities. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[189]

CPOs: The Commission has previously determined that registered CPOs are not small entities for the purpose of the RFA.[190] With respect to CPOs exempt from registration, the Commission has determined that a CPO is a small entity if it meets the criteria for exemption from registration under current § 4.13(a)(2).[191] Based on the requisite level of sophistication needed to comply with the SEC's regulatory regime for registered investment companies, and the fact that registered investment companies are generally intended to serve as retail investment vehicles and do not qualify for exemption under § 4.13(a)(2), the Commission believes that registered investment companies are generally not small entities for purposes of the RFA analysis. Moreover, this final rule will reduce the burden of complying with part 4 for CPOs of registered investment companies. The Commission has determined that the final rule will not create a significant economic impact on a substantial number of small entities.

CTAs: The Commission has previously decided to evaluate, within the context of a particular rule proposal, whether all or some CTAs should be considered to be small entities, and if so, to analyze the economic impact on them of any such rule.[192] The sole aspect of the final rule that affects CTAs that are registered with the Commission is the timeframe that permits Disclosure Documents to be used for 12 months rather than 9 months, thereby reducing the frequency with which updates must be prepared. While the Commission considers the reduced frequency with which these CTAs must prepare updates to their Disclosure Documents as reducing the overall burden on affected entities, it is of the view of the Commission that the reduction in updates mitigates the rule's economic impact. Over the course of three calendar years, the change from a 9 month update period to a 12 month update period eliminates 1 filing per CTA. This results in a change from 1.33 filings per year to 1 filing per year. In addition, because the eliminated filing would be an update of a document that was already prepared and reviewed by NFA, the Commission does not believe that the eliminated filing would result in a significant economic impact. As indicated above, it would reduce any impact that the rule would otherwise have. Moreover, the amended time period for updating Disclosure Documents for CTAs also aligns this requirement with other regulatory obligations that registered CTAs must comply with, including the filing of form CTA–PR pursuant to § 4.27 of the Commission's regulations.[193] The Commission believes that this will enable registered CTAs to avail themselves of operational efficiencies in satisfying its regulatory obligations as the information required under form CTA–PR is relevant to the preparation or updating of Disclosure Documents. Therefore, the Commission has determined that the final rule will not create a significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the final rule will not have a significant impact on a substantial number of small entities.

[185] The Commission has previously estimated that each CPO that subject to § 4.23 had a burden of approximately 50 hours associated with recordkeeping obligations and that each CPO subject to § 4.7(b)(4) had a burden of approximately 40 hours associated with recordkeeping obligations. Because the Commission is estimating that all registered CPOs will use third-party service providers for recordkeeping purposes, the Commission expects that burdens associated with §§ 4.7(b)(4) and 4.23 will be reduced, although the reduction cannot be quantified at this time.

[186] *See* 2012 Final Rule, *supra* note 6, 77 FR at 11273.

[187] *See* Proposal, *supra* note 23, 77 FR at 11349.

[188] *See* 5 U.S.C. 601, *et seq.*

[189] 47 FR 18618 (Apr. 30, 1982).

[190] *See* 47 FR 18618, 18619 (Apr. 30, 1982).

[191] *See* 47 FR at 18619–20.

[192] *See* 47 FR at 18620.

[193] 17 CFR 4.27.

C. Cost Benefit Analysis

a. Consideration of Costs and Benefits

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the Act or issuing certain orders.[194] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.[195]

Generally, the Commission believes that, by avoiding the imposition of potentially duplicative, inconsistent, or conflicting regulatory requirements on CPOs of RICs subject to federal securities laws and SEC rules, the final harmonization rule should generate important benefits while mitigating the costs on market participants.

In the following discussion, the Commission summarizes the key aspects of the final rule, and considers the benefits and costs, taking account of public comments received in response to the Proposal and the February Final Rule regarding harmonizing the compliance regime of the Commission with that of the SEC. The Commission then evaluates the final rule in light of the aforementioned § 15(a) public interest considerations.[196]

1. Background

In February 2012, the Commission adopted modifications to the exclusions from the definition of CPO that are delineated in § 4.5.[197] Specifically, the Commission amended § 4.5 to modify the exclusion from the definition of "commodity pool operator" for those entities that are investment companies registered as such with the SEC pursuant to the '40 Act.[198] This modification amended the terms of the exclusion available to CPOs of RICs to include only those CPOs of RICs that commit no more than a de minimis portion of their assets to the trading of commodity interests that do not fall within the definition of bona fide hedging and who do not market themselves as a commodity pool or other commodity investment.[199] Pursuant to this amendment, any such CPO of a RIC that exceeds this level will no longer be excluded from the definition of CPO. Accordingly, except for those CPOs of RICs who commit no more than a de minimis portion of their assets to the trading of commodity interests that do not fall within the definition of bona fide hedging and who do not market themselves as a commodity pool or other commodity investment, an operator of a RIC that meets the definition of "commodity pool operator" under § 4.10(d) of the Commission's regulations and § 1a(11) of the CEA must register as such with the Commission.[200]

In promulgating the revisions to § 4.5, the Commission received numerous comments that operators of RICs that also would be required to register as CPOs would be subject to duplicative, inconsistent, and possibly conflicting disclosure and reporting obligations. The Commission determined, after consideration of the comments received, that further consideration was warranted concerning whether and to what extent CPOs of RICs ought to be subject to various part 4 requirements, and in the 2012 Final Rule suspended the obligations of CPOs of RICs with respect to most of the requirements of part 4 until further rulemaking.[201] Therefore, concurrent with the 2012 Final Rule that amended § 4.5, the Commission issued the Proposal which was designed to address potentially conflicting or duplicative compliance obligations administered by the Commission and the SEC regarding disclosure, reporting and recordkeeping by CPOs of RICs.[202]

As set forth in the Proposal, the harmonization rulemaking sought to address a number of areas identified by commenters, including: the timing of the delivery of disclosure documents to prospective participants; the signed acknowledgement requirement for receipt of disclosure documents; the cycle for updating disclosure documents; the timing of financial reporting to participants; the requirement that a CPO maintain its books and records on site; the required disclosure of fees; the required disclosure of past performance; the inclusion of mandatory certification language; and the SEC-permitted use of a summary prospectus for open-ended registered investment companies.

In the Proposal, the Commission considered the costs and benefits of harmonizing the Commissions' regimes and requested comment on its considerations of costs and benefits, including a description of any cost or benefit the Commission had not considered.

After consideration of the comments received and further deliberation, the Commission is adopting rules that effectively implement a substituted compliance approach for dually registered CPOs of RICs, whereby such CPOs, largely through compliance with obligations imposed by the SEC, will be deemed compliant with the Commission's regulatory regime. This is consistent with the Commission's conclusion, based on the information currently available, that substituted compliance is appropriate because it believes that the regime administered by the SEC under SEC RIC Rules, with minor additional disclosure, should provide market participants with meaningful disclosure as required under part 4, enable the Commission to discharge its regulatory oversight function with respect to the derivatives markets, and ensure that CPOs of RICs maintain appropriate records regarding their operations.[203]

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[194] 7 U.S.C. 19(a).

[195] 7 U.S.C. 19(a)(2).

[196] The discussion of costs and benefits in this section should be read in conjunction with the discussion of the effects of the rule and the choices made by the Commission in the remainder of this preamble, all of which entered into the Commission's consideration of costs and benefits in connection with its decision to promulgate this rule.

[197] 17 CFR 4.5. *See* 2012 Final Rule, *supra* note 6, 77 FR 11252 (Feb. 24, 2012); correction 77 FR 17328 (March 26, 2012). Prior to this Amendment, all RICs, and the principals and employees thereof, were excluded from the definition of "commodity pool operator," by virtue of the RICs registration under the Investment Company Act of 1940. The 2012 amendment to § 4.5 maintained this exclusion for those RICs that engage in a de minimis amount of non-bona fide hedging commodity interest transactions. *See id.* Specifically, the amendment to § 4.5 retained this exclusion for RICs whose non-bona fide hedging commodity interest transactions require aggregate initial margin and premiums that do not exceed five percent of the liquidation value of the qualifying pool's portfolio, or whose non-bona fide hedging commodity interest transactions' aggregate net notional value does not exceed 100 percent of the liquidation value of the pool's portfolio.

[198] 15 U.S.C. 80a–1, *et seq.*

[199] 17 CFR 1.3(yy).

[200] Pursuant to the terms of § 4.14(a)(4), CPOs are not required to register as CTAs if the CPOs' commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which they are registered as CPOs. 17 CFR 4.14(a)(4).

[201] *See* 2012 Final Rule, *supra* note 6, 77 FR at 11252, 11255. The Commission exercised its authority under § 4.12(a), which provides that the Commission may exempt any person or class of persons from any or all of part 4 requirements if the Commission finds that the exemption is not contrary to the public interest or the purposes of the provision from which the exemption is sought. 17 CFR 4.12(a).

[202] *See*, Proposal, *supra* note 23.

[203] As discussed further below, the Commission has determined, in light of public comments, to modify certain elements of the Proposal. For example, the Commission is adopting a substituted compliance regime with respect to providing disclosures to prospective participants, whereby, with minor modification, the CPO of a RIC can rely upon the disclosures made pursuant to the SEC RIC Rules as satisfying its obligations under the Commission's regulations. Additionally, CPOs of

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2. Summary of the Final Rules

As discussed in greater detail in this section, the Commission believes that the rules finalized herein enable the Commission to discharge its regulatory oversight function with respect to the commodity interest markets and ensure that CPOs of RICs maintain appropriate records regarding their operations in a manner that avoids imposing unnecessary costs on such entities.

The final rules represent several significant changes from the Proposal. The Commission is allowing CPOs of RICs to elect to comply with the majority of the provisions under §§ 4.21, 4.22(a) and (b), 4.23, 4.24, 4.25 and 4.26 through a system of substituted compliance. That is, subject to certain conditions as delineated in § 4.12(c)–(d), a CPO of a RIC may be deemed compliant with those enumerated portions of the CFTC's regulatory regime through compliance with obligations already imposed by the SEC.

Although the final rule relies primarily on a substituted compliance approach, it imposes certain obligations on CPOs of RICs beyond what is otherwise required by the federal securities laws and SEC rules. These are as follows:

- The CPO of a RIC will be required to file notice of its use of the substituted compliance regime outlined in § 4.12 with NFA;
- The CPO of a RIC with less than three years operating history will be required to disclose the performance of all accounts and pools that are managed by the CPO and that have investment objectives, policies, and strategies substantially similar to those of the offered pool; and
- The CPO of a RIC will be required to file the financial statements that it prepares pursuant to its obligations with respect to the SEC with NFA and may file notice requesting an extension to align the Commission's filing deadline with that of the SEC.

In addition, the Commission has, after consideration of the issues presented in the comment letters, determined to modify three provisions of part 4 for all CPOs, including CPOs of RICs. Specifically, the Commission is deleting a provisions in §§ 4.23 and 4.7(b)(4) that require books and records to be kept at the "main business location" of the CPO. The Commission is updating §§ 4.23 and 4.7(b)(4) to allow all CPOs to use third-party service providers to manage their recordkeeping obligations, provided that each CPO electing to do so notifies the Commission through NFA as required under amended §§ 4.23(c) and 4.7(b)(4). The Commission has also determined to rescind the signed acknowledgement requirement in § 4.21(b). Finally, the Commission has amended §§ 4.26(a)(2) and 4.36(b) to allow the use of Disclosure Documents for a twelve-month cycle, rather than the current nine-month cycle, for both CPOs and CTAs.

In the following sections, the Commission considers the benefits and costs of the final rules, as well as the comments received regarding the costs and benefits associated with the Proposal, and evaluates the final rules in light of the five factors enumerated in Section 15(a)(2) of the CEA:[204]

3. Benefits

As explained throughout this release, the basic approach the Commission has taken to harmonization of disclosure and recordkeeping requirements for CPOs of RICs under the securities and commodities laws is substituted compliance. With very limited exceptions, a CPO of a RIC will satisfy its disclosure and recordkeeping obligations by maintaining compliance with applicable securities law requirements and SEC regulations. This approach offers benefits over possible alternatives, which, though not readily reduced to a dollar amount, the Commission believes are significant.

The Commission will benefit from the information gathered from the annual financial statements submitted to NFA. Though the reports filed with the SEC are publicly available and could be manually accessed by the Commission, the Commission believes that requiring CPOs of RICs to file a copy of their annual financial statements with NFA is a more efficient and expedient means of gathering required information necessary to monitor CPO activity and the markets. By having all CPO financial statements in one centralized database, the Commission will be better able to quickly and effectively access information about all CPOs trading in the markets overseen by the Commission, allowing for a faster and better informed response to any concerns that may arise regarding the trading of CPOs in derivatives markets. The submission of annual financial statements to NFA will also enable the Commission to gain a broader understanding of the financial stability and status of the RICs that use derivatives markets in a significant way.

NFA will also benefit from the information submitted by CPOs of RICs as part of their annual financial statements. This information will assist NFA in allocating its examinations resources more effectively through the scheduling of examinations based upon risk analysis of the annual financial data.

The Commission also believes that requiring CPOs of RICs to comply either with the full panoply of provisions in part 4 of the Commission's regulations or the substituted compliance regime adopted in this release will provide the Commission with additional information that it needs to monitor participants in markets subject to its oversight and enforce both the CEA and the Commission's regulations. This ability will not only provide investors with better access to a post-incident remedy, but will also act as a deterrent to behavior that is violative of the CEA and/or the Commission's regulations, and may reduce the frequency with which investors are harmed.

The Commission also believes that investors in RICs that hold commodity interests will benefit from this final rule as well. The Commission believes that the disclosure of prior performance for similar funds and accounts by CPOs of RICs with less than a three year operating history provides valuable information to investors. Pursuant to SEC guidance, RICs are currently permitted, but not required, to report past performance information for funds and accounts with investment objectives, policies, and strategies substantially similar to those of the offered RIC in the disclosure required by the SEC, therefore, many entities may not be accustomed to reporting such information. However, the Commission believes that for funds with less than three years of operating history, the disclosure of past performance information to potential investors is necessary for a comprehensive understanding of the risks of investing in a fund that trades above a de minimis amount in commodity interests. Derivative markets are highly complex and require specialized knowledge in order to manage funds effectively. The Commission continues to believe that the presentation of past performance provides investors with important information regarding the experience of the adviser of a relatively new fund. A prospective investor will, as a result of this requirement, be better able to assess the prior performance of other funds the adviser has managed. The Commission believes that this additional information

RICs will satisfy the obligations to provide periodic account statements pursuant to § 4.22, provided that the RIC's current net asset value per share is available to investors, and provided that the RIC furnishes semi-annual and annual reports to investors and files periodic reports with the SEC as required by the SEC.

[204] 7 U.S.C. 19(a)(2).

will give prospective investors a more complete sense of the ability of the adviser to trade in derivatives markets. For these reasons, the Commission is requiring prior performance of a CPO of a RIC with less than three years operating history to be disclosed as permitted by SEC disclosure regulations and guidance.

The CPO industry will also benefit from the amendments that the Commission has made to provisions applicable to all CPOs. First, the Commission removed the requirement in § 4.21 that a CPO receive a signed acknowledgement of receipt of a Disclosure Document before accepting funds from a new participant. Given the electronic and web-based solicitation strategies used by most entities today, the Commission believes that that requirement may be outdated, and extended the exemption proposed for registered investment companies to include all CPOs.

Second, the Commission removed the requirement in §§ 4.23 and 4.7(b)(4) that all books and records must be maintained at the main business office of the CPO. Originally intended to ensure that books and records were readily accessible to the Commission, if necessary, the Commission believes that this requirement, in the age of electronic recordkeeping, may also be outdated. Eliminating that requirement should relieve costs for market participants without compromising the Commission's regulatory objectives. The notice filing under § 4.23 allows the Commission to have accurate information on hand should it need to access the books and records of any CPO (including CPOs of RICs).

Finally, the Commission has determined to finalize the proposed amendments regarding the cycle for updating Disclosure Documents, outlined in § 4.26 for CPOs and § 4.36 for CTAs, to allow for a twelve-month cycle instead of the current nine-month cycle. In the Commission's opinion, the additional operational and cost efficiencies gained by these amendments justify the three-month delay for investors in receiving updated disclosure information. The Commission believes that the information provided in the Disclosure Document will be sufficiently timely for pool participants to make informed investment decisions. At the same time, the extended cycle allows Disclosure Document reporting to align with annual financial statement reporting. Further, with a nine-month cycle, a CPO or CTA would need to file and distribute two Disclosure Documents in the same calendar year approximately once every three years. The Commission believes the changes finalized within § 4.26 and § 4.36 eliminate the need to file more than one Disclosure Document in any given year, reducing the costs on CPOs and CTAs.

Overall, the Commission believes the final regulations will benefit CPOs of RICs by permitting these entities to rely on the filings made with the SEC to comply with many Commission regulations. Further, the Commission believes that all CPOs and CTAs will benefit from the amendments to requirements under §§ 4.7(b)(4), 4.21; 4.23, 4.26(b), and 4.36(b). The Commission also believes that the final regulations provide the public with additional information that is vital to informed participation in derivative markets through investment in RICs. Because many participants in RICs are retail participants, the Commission believes that participants in RICs should be given additional information to help gauge the risks associated with derivatives trading and relevant past performance information in order for them to make better informed decisions. As at least one commenter remarked, these vehicles are important investment vehicles for many retirement plans, college savings plans, and other investment goals. The Commission believes that the final rules provide flexibility and cost-efficiency for dual registrants at the same time that the rules increase the ability for investors to participate in these vehicles in a more informed and responsible manner. As such, the Commission believes the final rules achieve the goal enumerated in the Proposal: to mitigate the costs associated with compliance without compromising the effectiveness of the Commission's regulatory regime.

4. Costs

i. Costs Associated With Substituted Compliance

In this final rule, the Commission has determined to adopt a substituted compliance regime for CPOs of RICs. The Commission is adopting a compliance regime for CPOs of RICs largely premised upon such entities' adherence to the compliance obligations under SEC RIC Rules, whereby the Commission will accept compliance by such entities with the disclosure, reporting, and recordkeeping regime administered by the SEC as substituted compliance with part 4 of the Commission's regulations. The Commission has concluded that this is appropriate because it believes that general reliance upon the SEC's compliance regime, with minor additional disclosure, should provide market participants and the general public with meaningful disclosure, including for example, with regard to risks and fees, provide the Commission with information necessary to its oversight of CPOs, and ensure that CPOs of RICs maintain appropriate records regarding their operations. As noted, in the event that the operator of the RIC fails to comply with the SEC administered regime, the operator of the RIC will be in violation of its obligations under part 4 of the Commission's regulations and subject to enforcement action by the Commission.

The substituted compliance regime adopted by the Commission in these final rules provides that a CPO of a RIC will be deemed compliant with §§ 4.21, 4.22(a) and (b), 4.23, 4.24, 4.25, and 4.26 under the amendments to § 4.12, provided that the CPO comply with all applicable SEC RIC Rules.

Section 4.12 also provides that an entity must file a notice with the NFA to take advantage of the Commission's substituted compliance program for CPOs of RICs. The notice is effective upon submission and must only be filed once per pool. For purposes of calculating costs of the final rule, the Commission has estimated that each pool may require 2 hours to complete the notice and file the notice with NFA at an average salary cost of $76.93 per hour.[205] The Commission further estimates that 418 sponsors may be affected, [206] each with an average of 3

[205] The Commission staff's estimates concerning the wage rates are based on 2011 salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The $76.93 per hour is derived from figures from a weighted average of salaries across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2011, modified to account for an 1800-hour work-year, adjusted to account for the average rate of inflation in 2012, and multiplied by 1.3 to account for overhead and other benefits. The Commission anticipates that compliance with the part 4 provisions would require the work of an information technology professional (to provide necessary information); a compliance manager (to determine whether or not an entity is eligible for an exemption in accordance with the Commission's regulations); and an associate general counsel (to prepare notices of exemption). Thus, the wage rate is a weighted national average of salary for professionals with the following titles (and their relative weight); "programmer (senior)" (30% weight), "compliance manager" (45%), and "assistant/associate general counsel" (25%). The Commission uses this wage estimate in estimating costs for provisions that were not included in commenters' assessments of costs and benefits; for provisions that were included in the commenters' assessments of costs and benefits, the Commission utilizes the estimates provided by the commenters. All estimates have been rounded to the nearest hundred dollars.

[206] There currently is no source of reliable information regarding the general use of derivatives

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pools subject to the notice requirement. On this basis, the Commission anticipates a one-time cost per-entity of approximately $500.[207] Across all affected entities, the Commission estimates a total one-time cost of approximately $192,900.[208] The Commission believes that this is the extent of the costs associated with the substituted compliance regime.

The Commission received many comments regarding the costs of the Proposal.[209] Generally, commenters expressed concern about the cost imposed by the Proposal with respect to the compliance obligations of RICs and the Commission's consideration thereof.[210] Specifically, commenters stated that RICs were already subject to extensive regulation, and that additional compliance obligations required of CPOs under part 4 of the Commission's regulations may conflict with, or potentially be duplicative of, requirements under the SEC RIC Rules.[211] Commenters further cited specific market problems that may occur as a result of the rule, including reduced liquidity and potential price impacts should funds determine to reduce their positions in derivatives in order to avoid additional compliance obligations.[212] Commenters also stated that RIC shareholders would bear many of the costs of these rules in several ways, including but not limited to, higher fees and lower returns.[213]

In adopting a broad substituted compliance regime wherein CPOs of RICs will be deemed compliant with §§ 4.21, 4.22(a) and (b), 4.23, 4.24, 4.25, and 4.26 under the amendments to § 4.12, provided that the CPO comply with all SEC RIC Rules, the Commission expects that it has reduced or eliminated any impetus for RICs to reduce their positions in markets overseen by the Commission and subsequently any negative impact on market quality indicators. The Commission also believes it has greatly reduced, and in many cases eliminated, the costs CPOs of RICs face, which could be passed through to investors in such RICs.

The Commission also received comments from ICI and Invesco regarding the costs associated with discrete provisions in part 4 that would have been imposed under the Proposal.[214] These letters enumerated specific costs associated with three general areas addressed in the Proposal: (1) General disclosure requirements under § 4.24; (2) performance disclosure requirements under § 4.25; and (3) financial reporting requirements under § 4.22(a) and (b).[215] ICI also provided estimated costs associated with revising registration statements to include CFTC-required disclosures under the Proposal and costs associated with filing prospectuses with NFA.[216]

The final rules provide in § 4.12(c) that CPOs of RICs may take advantage of the Commission's substituted compliance provisions for all requirements under §§ 4.24, 4.25, and 4.22(a) and (b). The final rules do not require the disclosures contemplated under the Proposal nor do they require CPOs of RICs to file Disclosure Documents with NFA for review. Because the Commission anticipates that all CPOs of RICs will take advantage of the substituted compliance program to avoid any additional cost, the Commission estimates that none of the costs identified by commenters that are associated with complying with §§ 4.24, 4.25, and 4.22(a) and (b) will be incurred by CPOs of RICs.

ICI, as well as other commenters, also identified the following additional costs of the Proposal: (1) Costs to registrants if, because of complications associated with a different review process and/or more than one reviewing entity, their

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by registered investment companies. Because of this lack of information, in the Proposal, the Commission derived the estimated entities affected and the number of burden hours associated with this proposal through the use of statistical analysis.

The Commission estimated that 1,266 pools would require 418 entities to register as CPOs due to the amendments to § 4.5. To determine the average number of pools per entity, the Commission divided the estimated number of pools by the estimated number of entities to arrive at about 3 pools per entity. The methodology used to determine this estimate is fully explained *supra* in this release. The Commission understands from NFA that as of February 1, 2013, there were six new registered CPOs and five CPOs whose registration pre-dates the amendments to § 4.5 that have compliance obligations for 149 RICs that are commodity pools. Due to limitations on this data arising from other actions taken by the Commission or divisions thereof, the Commission does not believe that the data is sufficiently finalized to use as the basis for its PRA or cost benefit calculations. Therefore, the Commission has determined to use the numbers derived through the methodology used in the Proposal. Notwithstanding the limitations in the data to date, the Commission believes that these numbers are useful in considering the likely impact on the final rule on industry.

[207] The Commission calculates this amount as follows: (3 pools per sponsor) × (2 hours per pool) × ($76.93 per hour) = $461.58.

[208] The Commission calculates this amount as follows: ($461.58 per sponsor) × (418 sponsors) = $192,940.44.

[209] The Commission also received several comments regarding the costs of the amendments to § 4.5 that were finalized in the February Final Rule and asserting that the Commission should not have considered the costs of compliance separately from those of registration. *See*, SIFMA AMG Letter, Dechert Letter, ICI Letter, Invesco Letter. The Commission notes that it considered those costs related to the registration of CPOs of RICs under § 4.5 in the rules adopting such amendments and such comments are outside the scope of this rulemaking.

[210] *See*, ICI Letter; Dechert Letter; Katten Letter; NYCBA Letter; ABA Letter; Fidelity Letter; All letter; Invesco Letter; SIFMA AMG Letter; AXA Letter.

[211] *See*, e.g., ICI Letter; SIFMA AMG Letter.

[212] Katten Letter; Dechert Letter; Fidelity Letter; NYCBA Letter.

[213] ABA Letter; Dechert Letter; Invesco Letter; Katten Letter; SIFMA AMG Letter; AXA Letter: All Letter.

[214] *See*, ICI Letter; Invesco Letter. The Commission believes that the industry survey conducted by ICI provides useful insight about potential costs associated with various part 4 requirements, and as described further therein, has used the results in its consideration of costs associated with the final rules.

[215] ICI Letter. ICI reported that of the 42 advisers who responded to their survey, 33 advisers representing 551 funds with total net assets of $773 billion anticipated having to register under the newly amended § 4.5. ICI rounded all of its aggregate cost estimates to the nearest $100.

ICI calculated the initial costs of prior performance disclosure required for all funds under § 4.25 as follows: (18 hours per fund for initial compliance) × ($227 per initial compliance hour) = $4,086 per fund. ICI also calculated the ongoing costs of prior performance disclosure required for all funds under § 4.25 as follows: (9.5 hours per fund for ongoing compliance) × ($225 per ongoing compliance hour) = $2,137.50 per fund.

ICI calculated the aggregate initial costs for the surveyed funds as follows: ($4,086 initial cost per fund) × (551 surveyed funds) = $2,251,400. ICI also calculated the aggregate ongoing costs for the surveyed funds as follows: ($2,137.50 ongoing costs per fund) × (551 surveyed funds) = $1,177,800.

With respect to the preparation of account statements under § 4.22(a) and (b), ICI calculated a one-time cost associated with the separate calculation of brokerage commissions as follows: (42 hours per fund) × ($171 per hour) = $ 7,182 per fund. ICI calculated the aggregate costs associated with brokerage commissions for all surveyed funds as follows: ($7,182 cost per fund) × (551 surveyed funds) = $3,957,300.

ICI calculated the costs for each fund associated with preparing and distributing account statements per § 4.22(a) and (b) as follows: (5.75 hours per fund) × ($122.40 average cost per hour) = $703.84 per fund per statement. ICI calculated that the aggregate costs associated with the preparation and distribution of account statements for all surveyed funds as follows: ($703.84 costs per fund) × (551 surveyed funds) × (12 monthly statements) = $4,653,800.

In total, for all § 4.24 provisions, ICI estimated the 551 responsive funds would incur a cost of $5.8 million initially and $2.4 million annually. This was derived from hour and cost estimates for 5 different categories of disclosure that ICI developed from its survey data. For the industry as a whole, ICI estimated that these costs could be as high as $13.3 million initially and $5.5 million on an ongoing annual basis.

[216] ICI Letter. ICI calculated a one-time cost associated with the revision of prospectuses for all surveyed funds as follows: (15 hours per fund) × ($215 per hour) × (551 surveyed funds) = $1,777,000 to revise their prospectuses. ICI also calculated the initial cost of filing prospectuses with NFA as follows: (29.5 hours per fund) × ($199 per hour) = $5,870.50 per fund. ICI calculated the aggregate initial cost for the surveyed funds as follows: ($5,870.50 cost per fund) × (551 surveyed funds) = $3,234,600. ICI calculated the ongoing cost of filing prospectuses with NFA per fund as follows: (15.5 hours per fund) × ($195 per hour) = $3,022.50 per fund. ICI calculated the aggregate ongoing cost for all surveyed funds as follows: (551 surveyed funds) × ($3,022.50 cost per fund) = $1,665,400.

Disclosure Documents are not approved in a timely fashion and the RIC must temporarily stop issuing shares;[217] (2) costs associated with seeking relief from the SEC, CFTC, or NFA to comply with CFTC disclosure and reporting regulations, where conflicts exist;[218] (3) costs to the CFTC, SEC, and NFA of reviewing the additional filings, including the potential for multiple reviews of each filing in the early stages, as registrants seek to develop disclosures that are acceptable to all regulators; (4) likely significant investor confusion due to inconsistent and at times inapplicable disclosures;[219] and (5) costs associated with undoing decades of effort by the SEC to develop its fund disclosure regime for RICs.[220] Commenters also raised concerns about the costs associated with modifications to their internal compliance controls and additional systems that may be necessary to comply with the provisions of the Proposal.[221]

Additionally, one commenter stated that the legal conflicts and operational costs that would result from the application of the Proposal to CPOs of RICs would be substantial.[222] According to that commenter, many RICs belong to large fund families that may include dozens, if not hundreds, of funds.[223] This commenter further stated that significant economies of scale exist with respect to compliance with SEC regulations, because the advisers to these fund families are able to operate multiple funds on similar timetables and comply with similar filing and disclosure requirements.[224] The commenter contended that complying with the CFTC rules as described in the Proposal would not only impose significant new costs on the RICs that are subject to such rules, but also impede the ability of advisers to efficiently manage other funds that are not subject to CFTC requirements.[225]

The Commission does not anticipate these qualitative concerns to be applicable as a result of the substituted compliance regime provided in the final rules. Registrants will not be required to submit to multiple review processes, eliminating the costs associated with (1)–(3) above. The items that will be required of CPOs of RICs in addition to what is required by the SEC, which are discussed infra, will be disclosed in accordance with SEC regulations, which are familiar to investors and should largely eliminate any costs associated with (4) and (5) above. Moreover, because the Commission has adopted in these final rules a substituted compliance regime wherein CPOs of RICs will be deemed compliant with §§ 4.21, 4.22(a) and (b), 4.23, 4.24, 4.25, and 4.26 under the amendments to § 4.12, provided that the CPO comply with all SEC RIC Rules, the Commission does not believe that significant modifications to CPOs of RICs' compliance and disclosure infrastructures will be necessary.

ii. Costs Associated With Certain Additional Requirements for CPOs of RICs and Other Amendments

Although the final rule largely adopts a substituted compliance approach, the Commission acknowledges that there will be some costs associated with the final rule that will be borne by dually registered entities. In particular, CPOs of RICs with less than a three-year operating history will also have to provide disclosure regarding the past performance of all accounts and pools that are managed by the CPO and that have investment objectives, policies, and strategies substantially similar to those of the offered pool in accordance with SEC regulations and guidance. Additionally, CPOs of RICs will still be subject to § 4.22(c) and (d), requiring the CPO of a RIC to submit to NFA a copy of the annual financial statements the RIC provides to the SEC. Finally, all CPOs that use a third-party provider to maintain books and records are required to submit a notice with NFA with the name of the third-party provider, among other details, to ensure that the Commission has full access to the books and records of the CPO.

The Commission anticipates that CPOs of RICs will incur costs to disclose past performance information for substantially similar funds and accounts, if the fund has been in operation for less than three years. The ICI, in its estimates of costs and benefits, estimated that costs associated with prior performance disclosure for funds with less than a three year operating history would amount to 34 hours per fund at $265 per hour initially, and 25.5 hours per fund at $233 per hour each year in ongoing compliance requirements.[226] The ICI's estimates are based on the requirement in the Proposal to include past performance information for all other funds operated by the sponsor of the fund with less than a three year operating history. As noted above, the Commission has altered this provision to require disclosure of only those pools and accounts that are managed by the CPO and that have investment objectives, policies, and strategies substantially similar to those of the offered pool with less than a three year operating history. In so doing, the Commission has significantly reduced the requirements regarding past performance disclosure. As such, the Commission believes it can reasonably reduce the number of hours required both initially and in ongoing compliance. The Commission anticipates initial and ongoing cost of approximately 15 hours per fund. The Commission anticipates that 368 sponsors will need to provide additional past performance disclosure for an average of 1 fund per sponsor at 15 hours per fund.[227] Using ICI's hourly cost estimates, described above, the Commission estimates an initial annual cost of $4,000 per entity[228] and an ongoing annual cost of $3,500 per entity.[229] Across all affected entities, the Commission estimates an initial annual cost of $1,462,800[230] and an ongoing annual cost of $1,286,200.[231]

[217] ICI Letter. *See also*, Katten Letter; ABA Letter; AXA Letter; NYCBA Letter.

[218] ICI Letter. *See also*, Dechert Letter; IAA Letter; Fidelity Letter; SIFMA AMG Letter; ABA Letter; Katten Letter; AXA Letter; NYCBA Letter.

[219] ICI Letter. *See*, MFA Letter.

[220] ICI Letter. *See*, AXA Letter.

[221] NYCBA Letter; Dechert Letter; AXA Letter; ABA Letter; SIFMA AMG Letter.

[222] SIFMA AMG Letter.

[223] *Id.*

[224] *Id.*

[225] *Id.*

[226] ICI Letter.

[227] Based on information provided by the ICI in its comment letter, of the 551 surveyed funds that would trigger registration of their advisor, 159 of those funds had less than three years operating history. This constitutes approximately 30 percent of the surveyed funds that would not be excluded under § 4.5. The funds were operated by 29 of the 33 sponsors that expected to register, which constitutes 88 percent of the surveyed sponsors expecting to register. Applying these percentages to the Commission's estimated number of 1,266 pools and 418 sponsors, the Commission expects approximately 368 pool operators to be subject to the disclosure requirements for substantially similar accounts and funds with respect to 380 pools. With respect to the estimated hours required to prepare the past performance disclosure, the Commission has made an informed estimate premised upon the information provided by ICI and that it believes reflects the reduced disclosure obligations under the final rule as compared to the Proposal.

[228] The Commission calculates the amount as follows: (1 RIC per CPO) × (15 hours per RIC) × ($265 initial costs per hour) = $3,975.

[229] The Commission calculates the amount as follows: (1 RIC per CPO) × (15 hours per RIC) × ($233 ongoing costs per hour) = $3,495.

[230] The Commission calculates the amount as follows: ($3,975 estimated initial cost per CPO) × (368 estimated number of CPOs of RICs with less than 3 years performance) = $1,462,800.

[231] The Commission calculates the amount as follows: ($3,495 estimated ongoing cost per CPO) × (368 estimated number of CPOs of RICs with less than 3 years performance) = $1,286,160. This ongoing cost estimate assumes that all RICs with less than three years performance are newly formed and have no performance history. Many RICs subject to the disclosure requirement, however, may have operated for one or two years and thus incur

Continued

The Commission also anticipates that CPOs of registered investment companies will incur small costs for each fund due to the requirement that the CPO of each registered investment company must submit a copy of the fund's annual financial statements to the Commission via NFA.[232] The Commission anticipates that the cost to submit each fund's financial statements to be relatively small because the Commission is requiring only a copy of the statements required to be submitted to the SEC under the SEC RIC Rules to be submitted to NFA. The Commission anticipates that the additional requirement imposed by the rule in § 4.22 necessitates only addressing any potential formatting changes—i.e. making sure the document is in PDF form as required by NFA—and uploading the document via NFA's Easy File system (to which advisers should already have access by virtue of their registration). Thus, the Commission anticipates that CPOs of RICs will require no more than 2 hours per fund to comply with § 4.22. The Commission estimates that each CPO has an average of 3 RICs. Thus, at a rate of $76.93 per hour,[233] the Commission estimates an initial cost of approximately $500[234] and an annual ongoing cost of approximately $500.[235] As described in the PRA section of this release, the Commission estimates that approximately 418 sponsors will register as a result of the amendments to § 4.5.[236] Using this figure, the Commission anticipates a total initial cost of $192,900[237] and an annual total ongoing cost of $192,900.[238] The Commission believes this to be a conservative estimate, allowing for the maximum amount of time necessary to upload the fund's financial statements and submit them to NFA.

Finally, the Commission anticipates a small burden to be incurred by all CPOs, including registered investment companies required to be registered as CPOs under § 4.5, that wish to keep their books and records with a third-party service provider. Under §§ 4.23 and 4.7(b)(4), such entities must file a notice with NFA to inform the Commission and NFA of the entity's intent to utilize a third-party service provider as well as the name and contact information of the third party. Because the Commission cannot be sure how many CPOs will use third-party service providers, the Commission estimates that all CPOs will take advantage of the amendments to the record-keeping requirements under § 4.23 and § 4.7.[239] The Commission estimates that CPOs, including registered investment companies, will incur a one-time per-entity cost of $200.[240] The Commission anticipates that most CPOs will take advantage of this provision, and thus estimates a one-time estimated cost of $627,700 for all CPOs.[241]

The Commission expects that all dually-registered entities will take advantage of the substituted compliance regime available under the final regulations. The Commission thus expects that the total initial costs associated with the final rules will be $5,100 per entity[242] and $2,476,400 in the aggregate.[243] Likewise, the Commission expects annual ongoing costs associated with the final rules to be $4,000 per entity[244] and $1,479,100 in the aggregate.[245]

b. Section 15(a) Considerations

Section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

1. Protection of Market Participants and the Public

The Commission believes the rules promulgated in this release protect market participants by mitigating the costs associated with compliance. The rules maintain the effectiveness of the consumer protections of the

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a lower total cost. The Commission's estimate therefore may overstate the actual costs that past performance disclosure entails.

[232] The Commission notes that all CPOs are required to submit an annual report to NFA. Though the reports filed with the SEC are public domain could be manually accessed by the Commission, the Commission believes that requiring a copy of said reports to be filed with NFA is a more efficient and expedient means of gathering required information. By having all CPO financial statements in one centralized database, the Commission will be better able to quickly and effectively access information about all CPOs trading in the markets overseen by the Commission, allowing for a faster and better informed response to any concerns that may arise regarding the trading of CPOs in derivatives markets.

[233] *See, supra* note 205.

[234] The Commission calculates the amount as follows: (6 hours per entity) × ($76.93 average salary cost per hour) = $461.58.

[235] The Commission calculates this amount as follows: (6 hours per entity) × ($76.93 average salary cost per hour) = $461.58.

[236] *See supra* note 206.

[237] The Commission calculates this amount as follows: ($461.58 estimated initial cost per CPO) × (418 estimated number of CPOs of RICs) = $192,940.44.

[238] The Commission calculates this amount as follows: ($461.58 estimated ongoing cost per CPO) × (418 estimated number of CPOs of RICs) = $192,940.44.

[239] The Commission has previously estimated that each CPO that subject to § 4.23 had costs associated with approximately 50 hours associated with recordkeeping obligations and that each CPO subject to § 4.7(b)(4) had costs associated with approximately 40 hours associated with recordkeeping obligations. Because the Commission is estimating that all registered CPOs will use third-party service providers for recordkeeping purposes, the Commission expects that costs associated with §§ 4.7(b)(4) and 4.23 will be reduced, although the reduction cannot be quantified at this time.

[240] The Commission calculates this amount as follows: (2 estimated hours per notice) × ($76.93 estimated cost per hour) = $153.86.

[241] The Commission calculates this amount as follows: ($153.86 estimated cost per notice) × (4,080 estimated total number of registered CPOs) = $627,748.80.

[242] The Commission calculates the per-entity initial cost by summing the per-entity initial costs of the provisions described supra. Estimates may not sum to total due to rounding effects.

Notice of Substituted Compliance, § 4.12 = (3 pools per sponsor) × (2 hours per pool) × ($76.93 per hour) = $461.58.

Inclusion of Past Performance, § 4.25 = (1 pool per sponsor) × (15 hours per pool) × ($265 per hour) = $3,975.00.

Submission of Annual Report, § 4.22(c) = (3 pools per sponsor) × (2 hours per pool) × ($76.93 per hour) = $461.58.

Notice of Third Party Record-keeper, §§ 4.23, 4.7(b)(4) = (2 hours per sponsor) × ($76.93 per hour) = $153.86.

Total per-entity initial cost = ($461.58) + ($3,975.00) + ($461.58) + ($115.40) + ($153.86) = $5,061.02.

See supra notes 207, 228, 234, and 240.

[243] The Commission calculates the aggregate initial cost by summing the aggregate initial costs of the provisions described supra. Estimates may not sum to total due to rounding effects.

Notice of Substituted Compliance, § 4.12 = (461.58 per sponsor) × (418 sponsors) = $192,940.44.

Inclusion of Past Performance, § 4.25 = ($3,975.00 per sponsor) × (368 sponsors) = $1,462,800.00.

Submission of Annual Report, § 4.22(c) = ($461.58 per sponsor) × (418 sponsors) = $192,940.44.

Notice of Third Party Record-keeper, §§ 4.23, 4.7(b)(4) = ($153.86 per operator) × (4,080 operators) = $627,748.80.

Total aggregate initial cost = ($192,940.44) + ($1,462,800.00) + ($192,940.44) + ($48,235.11) + ($627,748.80) = $2,476,429.68.

See supra notes 208, 229, 237, and 241.

[244] The Commission calculates the per-entity ongoing cost by summing the per-entity ongoing costs of the provisions described *supra*. Estimates may not sum to total due to rounding effects.

Inclusion of Past Performance, § 4.25 = (1 pool per sponsor) × (15 hours per pool) × ($233 per hour) = $3,475.00.

Submission of Annual Report, § 4.22(c) = (3 pools per sponsor) × (2 hours per pool) × ($76.93 per hour) = $461.58.

Total per-entity ongoing cost = ($3,475.00) + ($461.58) = $3956.55.

See supra notes 235 and 238.

[245] The Commission calculates the aggregate ongoing cost by summing the aggregate ongoing costs of the provisions described supra. Estimates may not sum to total due to rounding effects.

Inclusion of Past Performance, § 4.25 = ($3,475.00 per sponsor) × (368 sponsors) = $1,286,160.00.

Submission of Annual Report, § 4.22(c) = ($461.58 per sponsor) × (418 sponsors) = $192,940.44.

Total aggregate ongoing cost = ($1,286,160.00) + ($192,940.44) = $1,479,100.44.

See supra notes 235 and 242.

Commission's regulatory regime while reducing costs for dually-registered entities. Though some costs are anticipated as a result of the final rules in order to provide additional information beyond that required by the SEC, the Commission believes such costs are necessary because the information the Commission is requiring of CPOs of RICs should provide additional insight for potential investors in deciding whether to invest in a fund that commits more than a de minimis portion of its assets to derivative trading.

In addition, the Commission believes the final rules provide a benefit to all CPOs by updating and modernizing certain provisions that may be outdated in the electronic age. CPOs will not be required to incur costs to comply with regulations that, in the absence of information to the contrary and in light of the Commission's current understanding, may not be necessary to ensure the effectiveness of the Commission's regulatory regime.

Furthermore, by lessening the regulatory costs RICs face, shareholders of these vehicles should not see much of an increase in fees or a decrease in returns, protecting the viability of these vehicles that are utilized by millions of families for their investment needs.

2. Efficiency, Competitiveness, and Financial Integrity of Markets

In light of the fact that these harmonizing regulations will not pose significant costs on CPOs of RICs, the Commission does not believe that these regulations will have a negative impact on the efficiency, competitiveness, or financial integrity of markets.

3. Price Discovery

The Commission has not identified a specific effect on price discovery as a result of these harmonizing regulations.

4. Sound Risk Management

The Commission has not identified a specific effect on sound risk management as a result of these harmonizing regulations.

5. Other Public Interest Considerations

The Commission has not identified other public interest considerations related to the costs and benefits of these harmonizing regulations.

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

Accordingly, CFTC amends 17 CFR part 4 as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

■ 1. Revise the authority citation for part 4 to read as follows:

Authority: 7 U.S.C. 1a, 2, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

■ 2. In § 4.7, revise paragraph (b)(4) and add paragraph (b)(5) to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(b) * * *

(4) *Recordkeeping relief.* Exemption from the specific requirements of § 4,23; Provided, That the commodity pool operator must maintain the reports referred to in paragraphs (b)(2) and (3) of this section and all books and records prepared in connection with his activities as the pool operator of the exempt pool (including, without limitation, records relating to the qualifications of qualified eligible persons and substantiating any performance representations). Books and records that are not maintained at the pool operator's main business office shall be maintained by one or more of the following: the pool's administrator, distributor or custodian, or a bank or registered broker or dealer acting in a similar capacity with respect to the pool. Such books and records must be made available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(5) If the pool operator does not maintain its books and records at its main business office, the pool operator shall:

(i) At the time it registers with the Commission or delegates its recordkeeping obligations, whichever is later, file a statement that:

(A) Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records in lieu of the pool operator;

(B) Sets forth the name and telephone number of a contact for each person who will be keeping required books and records in lieu of the pool operator;

(C) Specifies, by reference to the respective paragraph of this section, the books and records that such person will be keeping; and

(D) Contains representations from the pool operator that:

(*1*) It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by this section changes, by identifying in such amendment the new location and any other information that has changed;

(*2*) It remains responsible for ensuring that all books and records required by this section are kept in accordance with § 1.31;

(*3*) Within 48 hours after a request by a representative of the Commission, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the pool operator's main business office; *Provided, however,* that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the pool operator will obtain and provide such original books and records for inspection at the pool operator's main business office within 72 hours of such a request; and

(*4*) It will disclose in the pool's Disclosure Document the location of its books and records that are required under this section.

(ii) The pool operator shall also file electronically with the National Futures Association a statement from each person who will be keeping required books and records in lieu of the pool operator wherein such person:

(A) Acknowledges that the pool operator intends that the person keep and maintain required pool books and records;

(B) Agrees to keep and maintain such records required in accordance with § 1.31 of this chapter; and

(C) Agrees to keep such required books and records open to inspection by any representative of the Commission, the National Futures Association, or the United States Department of Justice in accordance with § 1.31 of this chapter.

■ 3. In § 4.12

■ a. Revise paragraphs (c)(1) and (2) introductory text;

■ b. Remove paragraph (c)(2)(iii);

■ c. Add paragraph (c)(3); and

■ d. Revise paragraphs (d)(1)(iii) and (iv).

The revisions and addition read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(c) *Exemption from Subpart B for certain commodity pool operators based on registration under the Securities Act of 1933 or the Investment Company Act*

of 1940. (1) *Eligibility.* Subject to compliance with the provisions of paragraph (d) of this section, any person who is registered as a commodity pool operator, or has applied for such registration, may claim any or all of the relief available under paragraph (c)(2) of this section if, with respect to the pool for which it makes such claim:

(i) The units of participation will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933; or

(ii) The pool is registered under the Investment Company Act of 1940.

(2) *Relief available to pool operator claiming relief under paragraph (c)(1)(i).* The commodity pool operator of a pool whose units of participation meet the criteria of paragraph (c)(1)(i) if this section may claim the following relief:

* * * * *

(3) *Relief available to pool operator claiming relief under paragraph (c)(1)(ii).* The commodity pool operator of a pool whose units of participation meet the criteria of paragraph (c)(1)(ii) of this section may claim the following relief:

(i) The pool operator of an offered pool will be exempt from the requirements of §§ 4.21, 4.24, 4.25, and 4.26; *Provided, that*

(A) The pool operator of an offered pool with less than a three-year operating history discloses the performance of all accounts and pools that are managed by the pool operator and that have investment objectives, policies, and strategies substantially similar to those of the offered pool; and,

(B) The disclosure provided with respect to the offered pool complies with the provisions of the Investment Company Act of 1940, the Securities Act of 1933, the Securities Exchange Act of 1934, the regulations promulgated thereunder, and any guidance issued by the Securities and Exchange Commission or any division thereof.

(ii) Exemption from the Account Statement distribution requirement of §§ 4.22(a) and (b); *Provided, however,* that the pool operator:

(A) Causes the current net asset value per share to be available to participants;

(B) Causes the pool to clearly disclose:

(*1*) That the information will be readily accessible on an Internet Web site maintained by the pool operator or its designee or otherwise made available to participants and the means through which the information will be made available; and

(*2*) The Internet address of such Web site, if applicable; and

(iii) Exemption from the provisions of § 4.23 that require that a pool operator's books and records be made available to participants for inspection and/or copying at the request of the participant.

(d)(1) * * *

(iii) Contain representations that:

(A) The pool will be operated in compliance with paragraph (b)(1)(i) of this section and the pool operator will comply with the requirements of paragraph (b)(1)(ii) of this section;

(B) The pool will be operated in compliance with paragraph (c)(1) of this section and the pool operator will comply with the requirements of paragraph (c)(2) of this section; or

(C) The pool will be operated in compliance with paragraph (c)(1) of this section and the pool operator will comply with the requirements of paragraph (c)(3) of this section;

(iv) Specify the relief sought under paragraph (b)(2), (c)(2), or (c)(3) of this section, as the case may be;

* * * * *.

■ 4. Add § 4.17 to read as follows:

§ 4.17 Severability.

If any provision of this part, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application.

§ 4.21 [Amended]

■ 5. Amend § 4.21 by removing and reserving paragraph (b).

■ 6. Amend § 4.23 by revising the introductory text and paragraph (a)(4) and adding paragraph (c) to read as follows:

§ 4.23 Recordkeeping.

Each commodity pool operator registered or required to be registered under the Act must make and keep the following books and records in an accurate, current and orderly manner. Books and records that are not maintained at the pool operator's main business office shall be maintained by one or more of the following: the pool's administrator, distributor or custodian, or a bank or registered broker or dealer acting in a similar capacity with respect to the pool. All books and records shall be maintained in accordance with § 1.31. All books and records required by this section except those required by paragraphs (a)(3), (a)(4), (b)(1), (b)(2) and (b)(3) must be made available to participants for inspection and copying during normal business hours. Upon request, copies must be sent by mail to any participant within five business days if reasonable reproduction and distribution costs are paid by the pool participant. If the books and records are maintained at the commodity pool operator's main business office that is outside the United States, its territories or possessions, then upon the request of a Commission representative, the pool operator must provide such books and records as requested at the place in the United States, its territories or possessions designated by the representative within 72 hours after the pool operator receives the request.

(a) * * *

(4) A subsidiary ledger or other equivalent record for each participant in the pool showing the participant's name and address and all funds, securities and other property that the pool received from or distributed to the participant. This requirement may be satisfied through a transfer agent's maintenance of records or through a list of relevant intermediaries where shares are held in an omnibus account or through intermediaries.

* * * * *

(c) If the pool operator does not maintain its books and records at its main business office, the pool operator shall:

(1) At the time it registers with the Commission or delegates its recordkeeping obligations, whichever is later, file a statement that:

(i) Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records in lieu of the pool operator;

(ii) Sets forth the name and telephone number of a contact for each person who will be keeping required books and records in lieu of the pool operator;

(iii) Specifies, by reference to the respective paragraph of this section, the books and records that such person will be keeping; and

(iv) Contains representations from the pool operator that:

(A) It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by this section changes, by identifying in such amendment the new location and any other information that has changed;

(B) It remains responsible for ensuring that all books and records required by this section are kept in accordance with § 1.31;

(C) Within 48 hours after a request by a representative of the Commission, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the pool operator's main

business office; *Provided, however,* that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the pool operator will obtain and provide such original books and records for inspection at the pool operator's main business office within 72 hours of such a request; and

(D) It will disclose in the pool's Disclosure Document the location of its books and records that are required under this section.

(2) The pool operator shall also file electronically with the National Futures Association a statement from each person who will be keeping required books and records in lieu of the pool operator wherein such person:

(i) Acknowledges that the pool operator intends that the person keep and maintain required pool books and records;

(ii) Agrees to keep and maintain such records required in accordance with § 1.31 of this chapter; and

(iii) Agrees to keep such required books and records open to inspection by any representative of the Commission or the United States Department of Justice in accordance with § 1.31 of this chapter and to make such required books and records available to pool participants in accordance with this section.

■ 7. Amend § 4.26 by revising paragraph (a)(2) to read as follows:

§ 4.26 Use, amendment and filing of Disclosure Document.

(a) * * *

(2) No commodity pool operator may use a Disclosure Document or profile document dated more than twelve months prior to the date of its use.

* * * * *

■ 8. Amend § 4.36 by revising paragraph (b) to read as follows:

§ 4.36 Use, amendment and filing of Disclosure Document.

* * * * *

(b) No commodity trading advisor may use a Disclosure Document dated more than twelve months prior to the date of its use.

* * * * *

Issued in Washington, DC, on August 12, 2013, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission.

Appendix to Final Rule on Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators—Commission Voting Summary

Note: The following appendix will not appear in the Code of Federal Regulations

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton, O'Malia, and Wetjen voted in the affirmative.

[FR Doc. 2013–19894 Filed 8–21–13; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2013–0057; FF09M21200–134–FXMB1231099BPP0]

RIN 1018–AY87

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2013–14 late-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: You must submit comments on the proposed migratory bird hunting late-season frameworks by September 3, 2013.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2013–0057.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–HQ–MB–2013–0057; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept emailed or faxed comments. 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: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2013

On April 9, 2013, we published in the **Federal Register** (78 FR 21200) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2013–14 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 9 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. Those headings are:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
   - i. September Teal Seasons
   - ii. September Teal/Wood Duck Seasons
   - iii. Black ducks
   - iv. Canvasbacks
   - v. Pintails
   - vi. Scaup
   - vii. Mottled ducks
   - viii. Wood ducks
   - ix. Youth Hunt
   - x. Mallard Management Units
   - xi. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Doves
17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

On June 14, 2013, we published in the **Federal Register** (78 FR 35844) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 14 supplement also provided detailed information on the 2013–14 regulatory schedule and announced the Service Regulations Committee (SRC) and Flyway Council meetings.

On June 19 and 20, 2013, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2013–14 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2013–14 regular waterfowl seasons.

On July 26, 2013, we published in the **Federal Register** (78 FR 45376) a third document specifically dealing with the proposed frameworks for early-season regulations. In late August 2013, we will publish a rulemaking establishing final frameworks for early-season migratory bird hunting regulations for the 2013–14 season.

On July 30–August 1, 2013, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2013–14 regulations for these species. This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits.

We have considered all pertinent comments received through August 2, 2013, on the April 9 and June 14, 2013, rulemaking documents in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES.** We will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or around September 20, 2013.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web

site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Waterfowl Breeding and Habitat Survey

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft, helicopters, and ground crews and encompass principal breeding areas of North America, covering an area over 2.0 million square miles. The traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Overall, despite a delayed spring over most of the survey area, habitat conditions during the 2013 Waterfowl Breeding Population and Habitat Survey were improved or similar to last year in many areas due to average or above-average annual precipitation, with the exceptions of southeastern Canada, the northeast United States, and portions of Montana and the Dakotas. The total pond estimate (Prairie Canada and United States combined) was 6.9 ± 0.2 million, which was 24 percent above the 2012 estimate of 5.5 ± 0.2 million and 35 percent above the long-term average of 5.1 ± 0.03 million. The 2013 estimate of ponds in Prairie Canada was 4.6 ± 0.2 million. This estimate was 17 percent above the 2012 estimate (3.9 ± 0.1 million) and 32 percent above the 1961–2012 average (3.5 ± 0.03 million). The 2013 pond estimate for the northcentral United States was 2.3 ± 0.1 million, which was 41 percent above the 2012 estimate (1.7 ± 0.1 million) and 42 percent above the 1974–2012 average (1.7 ± 0.02 million). Additional details of the 2013 Survey were provided in the July 26 **Federal Register** and are available from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Breeding Population Status

In the traditional survey area, which includes strata 1–18, 20–50, and 75–77, the total duck population estimate (excluding scoters [*Melanitta* spp.], eiders [*Somateria* spp. and *Polysticta stelleri*], long-tailed ducks [*Clangula hyemalis*], mergansers [*Mergus* spp. and *Lophodytes cucullatus*], and wood ducks [*Aix sponsa*]) was 45.6 ± 0.7 [SE] million birds. This represents a 6 percent decrease from last year's estimate of 48.6 ± 0.8 million, but is still 33 percent higher than the long-term average (1955–2012). Estimated mallard (*Anas platyrhynchos*) abundance was 10.4 ± 0.4 million, which was similar to the 2012 estimate, and 36 percent above the long-term average of 7.6 ± 0.04 million. Estimated abundance of gadwall (*A. strepera;* 3.3 ± 0.2 million) was similar to the 2012 estimate and 80 percent above the long-term average (1.9 ± 0.02 million). The estimate for American wigeon (*A. americana;* 2.6 ± 0.2 million) was 23 percent above the 2012 estimate of 2.1 ± 0.1 million and similar to the long-term average of 2.6 ± 0.02 million. The estimated abundance of green-winged teal (*A. crecca*) was 3.1 ± 0.2 million, which was similar to the 2012 estimate and 51 percent above the long-term average (2.0 ± 0.02 million). The estimate for blue-winged teal (*A. discors;* 7.7± 0.4 million) was 16 percent below the 2012 estimate and 60 percent above the long-term average of 4.8 ± 0.04 million. The estimate for northern shoveler (*A. clypeata;* 4.8 ± 0.2 million) was similar to the 2012 estimate and 96 percent above the long-term average of 2.4 ± 0.02 million. The northern pintail estimate (*A. acuta;* 3.3 ± 0.2 million) was similar to the 2012 estimate and was 17 percent below the long-term average of 4.0 ± 0.04 million. Abundance estimates of redheads (*Aythya americana;* 1.2 ± 0.09 million) and canvasbacks (*A. valisineria;* 0.8 ± 0.06 million) were similar to their 2012 estimates and were 76 percent and 37 percent above their long-term averages of 0.7 ± 0.01 million and 0.6 ± 0.01 million, respectively. Estimated abundance of scaup (*A. affinis* and *A. marila* combined; 4.2 ± 0.3 million) was 20 percent below the 2012 estimate and 17 percent below the long-term average of 5.0 ± 0.05 million.

The eastern survey area was restratified in 2005, and is now composed of strata 51–72. Estimated abundance of American black ducks (*Anas rubripes*) was 0.6 ± 0.04 million, which was similar to the 2012 estimate and the 1990–2012 average. The estimated abundance of mallards was 0.5 ± 0.2 million, which was similar to the 2012 estimate and 25 percent above the 1990–2012 average. Abundance estimates of ring-necked ducks (*Aythya collaris,* 0.6 ± 0.1 million) and goldeneyes (common and Barrow's [*Bucephala islandica*], 0.5 ± 0.1 million) were 24 percent and 17 percent above 2012 estimates and 25 percent and 10 percent above the long-term averages, respectively. Abundance estimates for green-winged teal and mergansers were similar to last year's estimates and their 1990–2012 averages.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area (revised in 2008 to exclude mallards in Alaska and the Old Crow Flats area of the Yukon Territory), Michigan, Minnesota, and Wisconsin, and was estimated to be 13.0 ± 1.2 million birds. This was similar to the 2012 estimate of 12.8 ± 1.2 million in 2012. See section 1.A. Harvest Strategy Considerations for further discussion of the implications of this information for this year's selection of the appropriate hunting regulations.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross's geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). Production of arctic-nesting geese depends heavily upon the timing of snow and ice melt, and on spring and early summer temperatures. In 2013, many arctic and boreal areas important for geese were characterized by a cold, late spring, followed by higher than average temperatures that in many cases produced an average timing of breeding. Biologists cautioned that the effect of a late spring combined with rapid warm-up was uncertain, but in many areas they reported average peak hatch dates and clutch sizes. A major exception to the generally average nesting conditions in the north-country was Alaska's Yukon–Kuskokwim Delta (YKD), where ice break-up was the latest since 1964. Predicted production on the YKD was then downgraded to poor after a storm surge/high tide event at peak hatch in late June destroyed numerous nests and goslings. Emperor geese, cackling Canada geese, and white-fronted geese were the species most affected. Spring was also later than average in Alaska's interior, and the area extending along the Beaufort Sea from Alaska's eastern coast through Tuktut Nogait National Park (Northwest Territories) remained ice-covered longer than normal. In contrast, in the central Arctic, phenology was earlier than average and earlier than last year, so above-average production of snow, Ross's geese, and mid-continent white-fronted geese nesting in the Queen Maud Gulf Sanctuary was expected. Brant and Canada geese nesting in the central Arctic should benefit as well. Gosling production of Canada goose

populations that migrate to the Atlantic and Mississippi Flyways should generally be average in 2013. Production by the Southern James Bay Canada goose population has been low, and that population continued to decline. Indices of wetland abundance in the Canadian and U.S. prairies in 2013 improved dramatically over last year's, with the exception of the western Dakotas and Eastern Montana. Although early spring was cold and wet in many goose nesting areas of the United States, the outlook for production was generally average. Breeding populations of most temperate-nesting geese remained high in 2013, despite efforts to reduce or stabilize them. Production of temperate-nesting Canada geese from most of their North American range is expected to be average in 2013.

Primary abundance indices increased for 11 goose populations and decreased for 11 goose populations in 2013, compared to 2012. Primary abundance indices for both populations of tundra swans decreased in 2013 from 2012 levels. The following populations displayed significant positive trends during the most recent 10-year period ($P < 0.05$): Mississippi Flyway Giant, Short Grass Prairie, and Hi-line Canada geese: Mid-continent, Western Central Flyway, and Western Arctic/Wrangel Island light geese; Ross's geese; Pacific brant; and the Pacific population of white-fronted geese. Only the Atlantic Flyway Resident Population of Canada geese showed a significantly negative 10-year trend. The forecast for the production of geese and swans in North America is generally favorable in 2013.

Waterfowl Harvest and Hunter Activity

National surveys of migratory bird hunters were conducted during the 2011 and 2012 hunting seasons. Almost 1.2 million waterfowl hunters harvested 15,931,200 (±6 percent) ducks and 2,879,900 (±5 percent) geese in 2011, and about 1.1 million waterfowl hunters harvested 15,704,500 (±6 percent) ducks and 3,191,200 (±6 percent) geese in 2012. Mallard, green-winged teal, gadwall, blue-winged/cinnamon teal (*Anas cyanoptera*), and wood duck (*Aix sponsa*) were the five most-harvested duck species in the United States, and the Canada goose was the predominant goose species in the harvest. Coot hunters (about 46,200 in 2011, and 40,500 in 2012) harvested 416,600 (±36 percent) coots in 2011, and 308,700 (±42 percent) in 2012.

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the April 9, 2013, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 14, 2013, **Federal Register**, discussed the regulatory alternatives for the 2013–14 duck hunting season. Late-season comments are summarized below and numbered in the order used in the June 14 **Federal Register**. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in successive numerical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 9 and June 14, 2013, **Federal Register** documents.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended the adoption of the "liberal" regulatory alternative.

Service Response: We continue to use adaptive harvest management (AHM) protocols that allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. In 2008, we described and adopted a protocol for regulatory decision-making for the newly defined stock of western mallards (73 FR 43290; July 24, 2008). For the 2013 hunting season, we continue to believe that the prescribed regulatory choice for the Pacific Flyway should be based on the status of this western mallard breeding stock, while the regulatory choice for the Mississippi and Central Flyways should depend on the status of the redefined mid-continent mallard stock. We also recommend that the regulatory choice for the Atlantic Flyway continue to depend on the status of eastern mallards.

For the 2013 hunting season, we are continuing to consider the same regulatory alternatives as those used last year. The nature of the "restrictive," "moderate," and "liberal" alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the "moderate" and "liberal" regulatory alternatives since 2002 (67 FR 47224; July 17, 2002). Also, in 2003, we agreed to place a constraint on closed seasons in the Mississippi and Central Flyways whenever the midcontinent mallard breeding-population size (as defined prior to 2008; traditional survey area plus Minnesota, Michigan, and Wisconsin) was >5.5 million (68 FR 37362; June 23, 2003).

Optimal AHM strategies for midcontinent and western mallards for the 2013–14 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2013 regulatory alternatives; and (3) current population models and associated weights for mid-continent and western mallards. Based on this year's survey results of 10.80 million mid-continent mallards (traditional survey area minus Alaska and the Old Crow Flats area of the Yukon Territory, plus Minnesota, Wisconsin, and Michigan), 4.55 million ponds in Prairie Canada, and 730,000 western mallards (392,000 and 338,000, respectively in California-Oregon and Alaska), the prescribed regulatory choice for the Pacific, Central, and Mississippi Flyways is the "liberal" alternative.

Regarding eastern mallards, mechanical problems resulting in safety concerns with Service aircraft limited survey coverage in the eastern strata of the Waterfowl Breeding and Population Habitat Survey (WBPHS). As a result, an observed 2013 population estimate for the eastern mallards is not available. Therefore, the Service and the Atlantic Flyway Council decided to inform the 2013 eastern mallard AHM decision based on a predicted 2013 eastern mallard population estimate and the optimal regulatory strategy derived for the Atlantic Flyway in 2012. The eastern mallard population prediction is

based on the 2012 observed breeding population (837,642), 2012 harvest rates estimates, and the 2012 model weights updates. Based on a predicted population of 897,000 eastern mallards, the prescribed regulatory choice the Atlantic Flyway is the "liberal" alternative.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyway Councils regarding selection of the "liberal" regulatory alternative and propose to adopt the "liberal" regulatory alternative, as described in the June 14, 2013, **Federal Register**.

D. Special Seasons/Species Management

iii. Black Ducks

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended that the Service follow the International Black Duck AHM Strategy for 2013–14.

Service Response: Last year, we adopted the International Black Duck AHM Strategy (77 FR 49868; August 17, 2012). The formal strategy is the result of 14 years of technical and policy decisions developed and agreed upon by both Canadian and U. S. agencies and waterfowl managers. The strategy clarifies what harvest levels each country will manage for and reduces conflicts over country-specific regulatory policies. Further, the strategy allows for attainment of fundamental objectives of black duck management: resource conservation, perpetuation of hunting tradition, and equitable access to the black duck resource between Canada and the United States while accommodating the fundamental sources of uncertainty, partial controllability and observability, structural uncertainty, and environmental variation. The underlying model performance is assessed annually, with a comprehensive evaluation of the entire strategy (objectives and model set) in 6 years. A copy of the strategy is available at the address indicated under **FOR FURTHER INFORMATION CONTACT,** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

For the 2013–14 season, the optimal country-specific regulatory strategies were calculated in September 2012 using: (1) The black duck harvest objective (98 percent of long-term cumulative harvest); (2) 2013–14 country specific regulatory alternatives; (3) parameter estimates for mallard competition and additive mortality; and (4) 2012 estimates of 603,000 breeding black ducks and 395,000 breeding mallards in the core survey area. The optimal regulatory choices are the liberal package in Canada and the restrictive package in the United States.

iv. Canvasbacks

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended a full season for canvasbacks with a 2-bird daily bag limit. Season lengths would be 60 days in the Atlantic and Mississippi Flyways, 74 days in the Central Flyway, and 107 days in the Pacific Flyway.

Service Response: Since 1994, we have followed a canvasback harvest strategy that if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining a projected spring population objective of 500,000 birds, the season on canvasbacks should be opened. A partial season would be permitted if the estimated allowable harvest was within the projected harvest for a shortened season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide. In 2008 (73 FR 43290; July 24, 2008), we announced our decision to modify the canvasback harvest strategy to incorporate the option for a 2-bird daily bag limit for canvasbacks when the predicted breeding population the subsequent year exceeds 725,000 birds.

This year's spring survey resulted in an estimate of 787,000 canvasbacks. This was 4 percent above the 2012 estimate of 760,000 canvasbacks and 37 percent above the 1955–2012 average. The estimate of ponds in Prairie Canada was 4.55 million, which was 17 percent above last year and 32 percent above the long-term average. Based on updated harvest predictions using data from recent hunting seasons, the canvasback harvest strategy predicts a 2014 canvasback population of 854,000 birds under a liberal duck season with a 1-bird daily bag limit and 794,000 with a 2-bird daily bag limit. Because the predicted 2014 population under 2-bird daily bag limit is greater than 725,000, the canvasback harvest strategy stipulates a full canvasback season with a 2-bird daily bag limit for the upcoming season.

v. Pintails

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended a full season for pintails, consisting of a 2-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, a 74-day season in the Central Flyway, and a 107-day season in the Pacific Flyway.

Service Response: The current derived pintail harvest strategy was adopted by the Service and Flyway Councils in 2010 (75 FR 44856; July 29, 2010). For this year, optimal regulatory strategies were calculated with: (1) An objective of maximizing long-term cumulative harvest, including a closed-season constraint of 1.75 million birds; (2) the regulatory alternatives and associated predicted harvest; and (3) current population models and their relative weights. Based on this year's survey results of 3.33 million pintails observed, a mean latitude of 54.8, and a latitude-adjusted breeding population (BPOP) of 4.19 million birds, the optimal regulatory choice for all four Flyways is the "liberal" alternative with a 2-bird daily bag limit.

vi. Scaup

Council Recommendations: The Atlantic and Pacific Flyway Councils recommended use of the "moderate" regulation package, consisting of a 60-day season with a 2-bird daily bag in the Atlantic Flyway, and an 86-day season with a 3-bird daily bag limit in the Pacific Flyway.

The Upper and Lower-Region Regulations Committees of the Mississippi Flyway Council and the Central Flyway Council also recommended use of the "moderate" regulation package. They further recommended modifying the "moderate" alternative for the Mississippi and Central Flyways from a 2-bird daily bag limit to a 3-bird daily bag limit for a full season.

Service Response: In 2008, we adopted and implemented a new scaup harvest strategy (73 FR 43290 on July 24, 2008, and 73 FR 51124 on August 29, 2008) with initial "restrictive," "moderate," and "liberal" regulatory packages adopted for each Flyway. Further opportunity to revise these packages was afforded prior to the 2009–10 season and modifications by the Mississippi and Central Flyway Councils were endorsed by the Service in July 2009 (74 FR 36870; July 24, 2009). In 2010, we indicated that regulatory packages utilized in the scaup harvest strategy would remain in effect for at least 3 years prior to their re-evaluation. However, we recognize that insufficient experience with some of the regulatory packages to date precludes proper evaluation of their performance. As such, we suggest that no changes should be made to a particular regulatory package prior to gaining at least 3 years of experience

with that package, barring any unforeseen circumstances. Further, we believe that any recommended changes to a package must adhere to the guidelines provided in 2009, and should outline the methodology used to support the change.

The Mississippi Flyway's recommendation to increase the scaup daily bag limit under the "moderate" package from 2 to 3 birds meets these requirements. As such, we concur with their recommended modification. At present, the regulatory packages used in the Mississippi Flyway for the scaup harvest strategy are: "restrictive" (45 days with a 2-bird daily bag limit and 15 days with a 1-bird daily bag limit), "moderate" (60 days with a 2-bird daily bag limit) and "liberal" (60 days with a 4-bird daily bag limit). In addition, the strategy includes criteria for equitable distribution of scaup harvest amongst flyways based on historical distribution (Mississippi: 52 percent; Atlantic: 19 percent; Central: 17 percent; Pacific: 12 percent). Under the "moderate" scaup package, the target harvest level for the Mississippi Flyway is 160,000 birds. Following implementation of the scaup harvest strategy, the observed harvest level for a 60-day season and 2-bird daily bag limit in the Mississippi Flyway has averaged 139,000 birds. This is 13 percent below the target harvest level for the flyway under the "moderate" package and is 12 percent below what is allocated to the Mississippi Flyway (52 percent) under the strategy. The observed annual scaup harvest in the Mississippi Flyway that occurred under a 60-day season with a 3-bird daily bag limit (1999–2004) averaged 163,000 scaup. That harvest level meets our criteria of being within 5 percent of the target harvest level specified in the strategy for the "moderate" package. In addition, that harvest level will increase the proportion of overall harvest in the Mississippi Flyway closer to 52 percent of the U.S. harvest, as specified by the strategy.

Regarding the Central Flyway Council's recommended modification to the "moderate" package, we also concur. Data indicate that recent harvests associated with a "moderate" season of 74 days and 2-bird daily bag limit in the Central Flyway averaged 45,700 scaup, which is about 15 percent below the target harvest level for the Central Flyway under the "moderate" package. Analyses of hunter harvest bag data indicate that increasing the daily bag limit from 2 to 3 birds per day would result in about a 9 percent increase in harvest from current levels, to a total harvest of about 50,000 scaup per season. Since this level is still below the 54,000 target harvest level for the Central Flyway under the "moderate" package, the Central Flyway's modified package conforms to the guidance previously provided for modifying regulatory packages.

The 2013 breeding population estimate for scaup is 4.17 million, down 20 percent from the 2012 estimate of 5.24 million. Total estimated scaup harvest for the 2012–13 season was 732,000 birds. Based on updated model parameter estimates, the optimal regulatory choice for scaup is the "moderate" package in all four Flyways.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended modification of the Atlantic Population (AP) Canada goose hunting season frameworks for North Carolina's Northeast Goose Hunt Unit to a 14-day season beginning with the 2013–14 hunting season.

The Central Flyway Council recommended increasing the Canada goose daily bag limit from 3 to 8 geese in the east-tier States.

The Pacific Flyway Council recommended several changes to dark goose season frameworks. More specifically, they recommended:

1. Splitting the framework for dark geese into separate frameworks for Canada geese (and brant in interior States) and white-fronted geese (see 5. White-fronted Geese for more information);

2. A new Canada goose framework of 100 days (California, Oregon, and Washington) or 107 days (interior States) with outside dates of the Saturday closest to September 24 (interior States) or the Saturday closest to October 1 (California, Oregon, and Washington) to the last Sunday in January and a daily bag limit of 4 Canada geese (unchanged from last year);

3. Deletion of those State and or zone framework exceptions that are encompassed in the new general framework;

4. Creation of two new goose zones (Washington County Zone and Wasatch Front Zone) in Utah by dividing the Remainder-of-the-State Zone into three zones and modifying the boundary of the Northern Utah Zone to exclude Cache and Rich Counties, which would transfer to the Remainder-of-the-State Zone; and

5. Extending the framework closing day in Utah's new Washington County and Wasatch Front zones from the last Sunday in January to the first Sunday in February.

Service Response: We agree with the Atlantic Flyway Council's recommendation concerning changes to the frameworks for North Carolina's Northeast Goose Hunt Unit. The Council notes that the mean 3-year (2011–13) estimate of migrant Canada geese in North Carolina's Northeast Hunt Unit is 10,664 geese, which represents an increase from 5,348 geese (3-year mean) experienced in 2005. Further, the change requested is in accordance with the new 2013 AP Canada Goose Harvest Strategy.

We also support the Central Flyway Council's recommendation to increase the dark goose daily bag limit in the east-tier States from 3 to 8 geese. As we stated last year (76 FR 58682; September 21, 2011) and in 2010 (75 FR 58250; September 23, 2010), while we agree that the Flyway's proposed bag limit increase would likely result in an increased harvest of resident Canada geese, arctic-nesting Canada goose populations also would be subjected to additional harvest pressure. We recognize the continuing problems posed by increasing numbers of resident Canada geese and that migrant populations of Canada geese in the Central Flyway are above objective levels. We also understand the Flyway's desire to provide as much hunting opportunity on these geese as possible, and we share the philosophy that hunting, not control permits, should be the primary tool used to manage populations of game birds. Thus, we provided guidance on the progress that the Central and Mississippi Flyways needed to accomplish for us to consider an increase in the bag limit for Canada geese during the regular goose seasons in Central Flyway East-Tier States. Specifically, we stated that at a minimum agreement between the two Flyways on management objectives must be reached. During the last year, the technical committees from the two Flyways, together with the Service, have conducted technical assessments to determine sustainable harvest rates for arctic-nesting Canada geese from the midcontinent area, and have incorporated the results into revised management plans that have been adopted by their respective Councils. The primary management objectives are the same for the two plans. Further, the technical assessments indicate that a 10 percent harvest rate is allowable for maintaining objective abundances of these geese. In recent years, hunting seasons have resulted in a 3.6 percent harvest rate on these geese when the Central Flyway had a 3-bird bag limit.

Because the proposed bag limit increase likely will not result in the same proportional increase in the harvest rate, we believe allowing the Central Flyway to increase their bag limit to 8 birds per day will not exceed the 10 percent harvest rate.

We support all of the Pacific Flyway goose recommendations regarding Canada geese (see 5. White-fronted Geese for further information on recommendations directed at Pacific Flyway white-fronted goose populations). The creation of two new goose zones (Wasatch Front Zone and Washington County Zone) and extending the framework closing day in these new zones from the last Sunday in January to the first Sunday in February is designed to help manage resident Canada geese by allowing later hunting in areas of the State with urban goose issues while maintaining traditional hunting opportunities in more rural areas. The Council notes that Utah has been collecting extensive data on urban goose populations along the Wasatch Front (Salt Lake, Weber, Davis, Utah Counties) since 2006 and data indicates that urban goose populations continue to increase, reaching as high as 10,000 birds in some years. In 2006, Utah moved the goose season closing date to the end of January to target urban geese returning to wetland areas to establish breeding territories. As such, Utah witnessed a large increase in band returns from birds living within city limits that were harvested during the extended hunting period. However, harvest of birds not using urban areas was also occurring. In order to increase pressure on urban populations of geese and reduce harvest of non-urban geese, Utah desires to modify the urban zone to only include areas with populations of urban geese. We agree.

C. Special Late Seasons

Council Recommendations: The Mississippi Flyway Council recommended changing Indiana's experimental late Canada goose season status to operational.

Service Response: We concur with the Mississippi Flyway Council's recommendation to make Indiana's experimental late Canada goose season in the Terre Haute region operational. In 2007, Indiana initiated an experimental late Canada goose season in 30 counties to address increasing resident Canada goose populations. An evaluation report was submitted to the Flyway Council and Service in 2010. Although State-wide harvest of migrant Canada geese was within the allowed 20 percent criteria, take of migrant geese in the six-county Terre Haute region slightly exceeded the criteria for special late Canada goose seasons. Consequently, 24 counties were granted operational status in 2010, while the 6-county Terre Haute region was allowed to continue in an experimental status to allow for additional data collection (75 FR 58250; September 23, 2010). Indiana provided a report on that additional assessment in 2011. Concurrent to Indiana's report in 2011, we were also determining the appropriateness of the existing criteria that govern late Canada goose seasons as part of the ongoing preparation of a new programmatic supplemental environmental impact assessment on migratory bird hunting. On May 31, 2013 (78 FR 32686), we published a notice of availability in the **Federal Register** on a new programmatic document, "Second Final Supplemental Environmental Impact Statement [EIS]: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds" (EIS 20130139). We published our Record of Decision on July 26, 2013 (78 FR 45376). In the recently completed Supplemental EIS and Record of Decision, we eliminated most of the evaluation requirements for special Canada goose seasons. Because Indiana's experimental season falls under this category, we concur that the season should be made operational.

5. White-Fronted Geese

Council Recommendations: The Pacific Flyway Council recommended new white-fronted goose frameworks consisting of a 107-day season with outside dates of the Saturday closest to September 24 (interior States) or the Saturday closest to October 1 (California, Oregon, and Washington) to March 10, with a daily bag limit of 6 white-fronted geese. The Council also recommended increasing the daily bag limit for white-fronted geese in California's Sacramento Valley Special Management Area from 2 to 3 geese per day.

Service Response: We agree with the Pacific Flyway's request to establish separate frameworks for white-fronted geese. The current 3-year average population estimate (2011–13) for Pacific white-fronted geese is 616,124, which is substantially above the Flyway population objective of 300,000. Further, the population has shown an upward trend for nearly the last 30 years. As the number of Pacific white-fronts has increased so have complaints of agricultural damage on wintering and staging areas. The proposed framework change should allow additional harvest of Pacific white-fronted geese while maintaining traditional Canada goose hunting opportunities.

We also agree with the Council's recommendation to increase the daily bag limit from 2 to 3 in California's Sacramento Valley Special Management Area (SMA). Two populations of white-fronted geese occur in the SMA, Pacific white-fronted and Tule white-fronted geese. As we noted earlier, the Pacific white-fronted goose population is increasing and is 110 percent over its population objective of 300,000. Estimates of the Tule white-fronted goose population indicate a stable and possibly increasing trend. In 2011, the population estimate was 15,500, which is up from 11,950 in 2003. While the SMA is in place to restrict the harvest of Tule geese, and statistical analyses indicates a higher probability of harvesting Tule geese as the season progresses, the absolute number of Tule geese that are harvested remains quite low (ranging from 40 in 2010, to 173 in 2000). In 2011, the season length in the SMA was increased by 7 days. Following that increase, analyses still indicates a higher probability of harvesting Tule geese as the season progresses, but the estimated Tule harvest appears to remain within the range of harvest experienced prior to the 2011 extended season (92 in 2011, and 61 in 2012). We would expect a minor increase in Tule harvest with the proposed bag limit increase, but expect harvest to remain within the currently experienced range.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 30-day season with a 2-bird daily bag limit for the 2013–14 hunting season.

Service Response: We concur. The 2013 mid-winter index (MWI) for Atlantic brant was 111,752. As such, the brant management plan prescribes a 30-day season with a 2-bird daily bag limit when the MWI estimate falls between 100,000 and 125,000 brant.

7. Snow and Ross's (Light) Geese

Council Recommendations: The Central Flyway Council recommended a 50-bird daily bag limit for light geese. They also recommended modification of the light goose hunting and Conservation Order (CO) activities in the Rainwater Basin (RWB) area of Nebraska, which is implemented through the late-winter snow goose hunting strategy cooperatively developed by the Central Flyway Council and the Service.

The Pacific Flyway Council recommended increasing the daily bag limit for light geese in the interior States and Oregon's Malheur County Zone from 10 per day to 20 per day, and

increasing the bag limit for light geese in California from 6 per day to 10 per day. The Council also recommended deletion of the requirement that Oregon's Malheur County Zone and Idaho's Zone 2 goose seasons occurring after the last Sunday in January be concurrent.

Service Response: We support the recommendation from the Central Flyway to increase the bag limit on light geese from 20 to 50 birds per day. However, we do not believe that additional increases in recreational hunting opportunities will solve the problems associated with overabundant light geese. We are interested in learning about the effect that continued liberalizations of hunting opportunities may have on public support for hunting. We believe that we may be approaching the limits of social acceptance for the use of hunting to control the number of mid-continent light geese. Therefore, we prefer that the partners commit to developing a comprehensive plan that evaluates our options to address the issue of light goose overabundance. This liberalization should be viewed as a temporary action until such a comprehensive plan is completed. Only through such a comprehensive effort, which must include communications products to inform the various stakeholders of what actions, if any, the conservation community may take to achieve objectives, will we be able to move forward on this issue.

Regarding the Central Flyway Council's recommended modifications concerning light goose hunting in the Rainwater Basin, we concur. Initiated in 1999, the purpose of the CO was to reduce the size of the mid-continent light goose population. Provisions in the CO allow for the unlimited take of light geese after all other regular waterfowl and crane hunting seasons are closed and allows take after March 10. When the CO was first initiated in Nebraska in 1999, there was considerable debate and concern about CO activities in the RWB of Nebraska and impacts to other non-target species. This debate ultimately led to the adoption of special regulations in 2004 for the RWB which limited the number of open days, closed portions of public areas, and created a buffer along the Platte River. However, the Central Flyway notes that recent changes in waterfowl migration and the number of individuals participating in the CO have led to a re-evaluation of the special regulations in the RWB. This evaluation indicated that the current regulations may not be addressing the issues with non-target species as well as harvest of light geese. Additionally, surveys soliciting opinions of CO participans suggested changes in the special regulations in the RWB are warranted and/or acceptable.

Regarding the Pacific Flyway Council's recommendation to increase the daily bag limit for light geese in the interior States and Oregon's Malheur County Zone from 10 per day to 20 per day, we concur. The Western Arctic Population (WAP) of lesser snow geese is currently above goal (2009 estimate of 434,000) and has grown at a rate of 4 percent per year since 1976, which is similar to the Midcontinent Population prior to their designation as overabundant. The Council notes that the long-term population growth, evidence of localized habitat degradation on the breeding grounds, low harvest rate, and high adult survival rate has prompted the Canadian Wildlife Service to recommend the WAP be designated as overabundant. Further, management prescriptions recommended in the WAP plan update are meant to keep the population in check and prevent habitat degradation problems. The increase in daily bag limit is intended to slow the growth rate of WAP lesser snow geese. The recommended bag limit increase for light geese in its Malheur County Goose Zone is intended to match the bag limit in adjacent areas of Idaho.

We also agree with the Council's recommendation to increase the bag limit for light geese in California from 6 per day to 10 per day. California is the winter terminus for light geese from three different populations (Wrangel Island and WAP lesser snow and Ross' geese). All three of these populations are above population goals based on recent breeding population indices. While the Council notes that increasing bag limits on light geese has the potential for additional impacts to Wrangel Island snow geese, the wintering estimates of light geese in California were approximately 800,000 geese. Roughly 10 percent of the wintering population is composed of Wrangel Island snow geese. The most recent population estimate for Wrangel Island snow geese was 155,000 in 2011, and Washington estimated 67,000 wintering with roughly 10,000 wintering in other locations, excluding California. We agree with the Council that the large portion of WAP and Ross' geese wintering in California serve as a buffer to the small portion of Wrangel Island snow geese wintering in California.

Lastly, we agree with the Council's recommendation to delete the requirement that Oregon's Malheur County Zone and Idaho's Zone 2 goose seasons occurring after the last Sunday in January be concurrent. This requirement was intended to prevent light geese on one side of the Snake River avoiding hunting pressure by crossing the River to areas where the goose season was closed. Oregon and Idaho note that at all times during the late season time period, hunting seasons for at least one group (white-fronted or light) of geese will be open on either side of the Snake River. We agree that this should have the same effect as holding concurrent seasons.

22. Other

Council Recommendations: The Pacific Flyway Councils recommended that the Service increase the possession limit for coots and moorhens to 3 times the daily bag limit, consistent with other waterfowl, beginning in the 2013–14 season.

Service Response: In the July 26 **Federal Register**, we proposed to increase the possession limit for all species for which we currently have possession limits of twice the daily bag limit to three times the daily bag limit. We also proposed to include sora and Virginia rails in this possession limit increase. We did not propose to increase the possession limits for other species and hunts for which the possession limit is equal to the daily bag limit, or for permit hunts for species such as swans and some crane populations. Currently, the possession limit for coots and moorhens is an aggregate bag limit equal to the daily bag limit. The Pacific Flyway is the only Flyway utilizing an aggregate coot and moorhen daily bag and possession limit. However, we see no reason to exclude Pacific Flyway coots and moorhens from our proposed increase in possession limits to 3 times the daily bag limit. This proposed change would be consistent with possession limits for other waterfowl in the Pacific Flyway and consistent with possession limits for coots and moorhens in the other Flyways.

Public Comments

The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgating final migratory game bird hunting regulations, we will consider all comments we receive. These comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the

ADDRESSES section. We will not accept comments sent by email or fax. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section. We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov*. 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in the preambles of any final rules.

Paperwork Reduction Act

This rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0010—Mourning Dove Call Count Survey (expires 4/30/2015).
- 1018–0019—North American Woodcock Singing Ground Survey (expire 4/30/2015).
- 1018–0023—Migratory Bird Surveys (expires 4/30/2014). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

Other Required Determinations

Based on our most current data, we are affirming our required determinations made in the April 9, June 14, and July 26 proposed rules; for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see our April 9, 2013, proposed rule (78 FR 21200):

- National Environmental Policy Act (NEPA) Consideration;
- Endangered Species Act Consideration;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12866, 12988, 13132, 13175, and 13211.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2013–14 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 12, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2013–14 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposals for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2013, and March 10, 2014. These frameworks are summarized below.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are three times the daily bag limit.

Permits: For some species of migratory birds, the Service authorizes the use of permits to regulate harvest or monitor their take by sport hunters, or both. In many cases (e.g., tundra swans, some sandhill crane populations), the Service determines the amount of harvest that may be taken during hunting seasons during its formal regulations-setting process, and the States then issue permits to hunters at levels predicted to result in the amount of take authorized by the Service. Thus, although issued by States, the permits would not be valid unless the Service approved such take in its regulations.

These Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take migratory birds at levels specified in the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferrable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions

For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Light geese: Snow (including blue) geese and Ross's geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 days per duck-hunting zone, designated as "Youth Waterfowl Hunting Days," in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, tundra swans, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day. Tundra swans may only be taken by participants possessing applicable tundra swan permits.

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26).

Hunting Seasons and Duck Limits: 60 days. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 1 black duck, 2 pintails, 1 mottled duck, 1 fulvous whistling duck, 3 wood ducks, 2 redheads, 2 scaup, 2 canvasbacks, and 4 scoters.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours should be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours should be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, Virginia, and West Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Vermont may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. These seasons also include white-fronted geese. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut:

North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit.

Atlantic Population (AP) Zone: A 50-day season may be held between October 10 and February 5, with a 3-bird daily bag limit.

South Zone: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Resident Population (RP) Zone: An 80-day season may be held between October 1 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Delaware: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

Florida: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Georgia: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland:

RP Zone: An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

Massachusetts:

NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 50-day season may be held between October 10 and February 5, with a 3-bird daily bag limit.

New Hampshire: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey:

Statewide: A 50-day season may be held between the fourth Saturday in October (October 26) and February 5, with a 3-bird daily bag limit.

Special Late Goose Season Area: A special season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York:

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and between October 1 and February 15, a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: A special season may be held between January 15 and February 15, with a 5-

bird daily bag limit in designated areas of Suffolk County.

AP Zone: A 50-day season may be held between the fourth Saturday in October (October 26), except in the Lake Champlain Area where the opening date is October 10, and February 5, with a 3-bird daily bag limit.

Western Long Island RP Zone: A 107-day season may be held between the Saturday nearest September 24 (September 21) and March 10, with an 8-bird daily bag limit. The season may be split into 3 segments.

Rest of State RP Zone: An 80-day season may be held between the fourth Saturday in October (October 26) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

North Carolina:

SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 5-bird daily bag limit.

RP Zone: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Northeast Hunt Unit: A 14-day season may be held between the Saturday prior to December 25 (December 21) and January 31, with a 1-bird daily bag limit.

Pennsylvania:

SJBP Zone: A 78-day season may be held between the first Saturday in October (October 5) and February 15, with a 3-bird daily bag limit.

RP Zone: An 80-day season may be held between the fourth Saturday in October (October 26) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 50-day season may be held between the fourth Saturday in October (October 26) and February 5, with a 3-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. A special late season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, an 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Vermont:

Lake Champlain Zone and Interior Zone: A 50-day season may be held between October 10 and February 5 with a 3-bird daily bag limit.

Connecticut River Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit.

Virginia:

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 3-bird daily bag limit. Additionally, a special late season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

West Virginia: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments in each zone.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 25-bird daily bag limit and no possession limit. States may split their seasons into three segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 30-day season between the Saturday nearest September 24 (September 21) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26).

Hunting Seasons and Duck Limits: The season may not exceed 60 days, with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black duck, 2 pintails, 3 wood ducks, 2 canvasbacks, 3 scaup, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 21) and March 10; for white-fronted geese not to exceed 74 days with 2 geese daily or 88 days with 1 goose daily between the Saturday nearest September 24 (September 21) and the Sunday nearest February 15 (February 16); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 21) and January 31. There is no possession limit for light geese. States may select seasons for Canada geese not to exceed 92 days with 2 geese daily or 78 days with 3 geese daily between the Saturday nearest September 24 (September 21) and January 31 with the following exceptions listed by State:

Arkansas: The season may extend to February 15.

Indiana:

Late Canada Goose Season Area: A special Canada goose season of up to 15 days may be held during February 1–15 in the Late Canada Goose Season Zone. During this special season, the daily bag limit cannot exceed 5 Canada geese.

Iowa: The season for Canada geese may extend for 107 days. The daily bag limit is 3 Canada geese.

Michigan:

The framework opening date for all geese is September 11 in the Upper Peninsula of Michigan and September 16 in the Lower Peninsula of Michigan.

Southern Michigan Late Canada Goose Season Zone: A 30-day special Canada goose season may be held between December 31 and February 15. The daily bag limit is 5 Canada geese.

Minnesota: The season for Canada geese may extend for 107 days. The daily bag limit is 3 Canada geese.

Missouri: The season for Canada geese may extend for 85 days. The daily bag limit is 3 Canada geese.

Tennessee: Northwest Zone—The season for Canada geese may extend to February 15.

Wisconsin:

(a) Horicon Zone—The framework opening date for all geese is September 16. The season may not exceed 92 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

(b) Exterior Zone—The framework opening date for all geese is September 16. The season may not exceed 92 days. The daily bag limit is 2 Canada geese.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26).

Hunting Seasons:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days. The last 23 days must run consecutively and may start no earlier than the Saturday nearest December 10 (December 7).

(2) *Remainder of the Central Flyway:* 74 days.

Bag Limits: The daily bag limit is 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females), 3 scaup, 2 redheads, 3 wood ducks, 2 pintails, and 2 canvasbacks. In Texas, the daily bag limit on mottled ducks is 1, except that no mottled ducks may be taken during the first 5 days of the season.

Merganser Limits: The daily bag limit is 5 mergansers, only 2 of which may be hooded mergansers. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Colorado, Kansas (Low Plains portion), Montana, Nebraska, New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Colorado, Kansas, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 21) and the Sunday nearest February 15 (February 16). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 21) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions that are consistent with the late-winter snow goose hunting strategy cooperatively developed by the Central Flyway Council and the Service are required.

Season Lengths and Limits:

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 50 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 107 days with a daily bag limit of 8. For white-fronted geese, these States may select either a season of 74 days with a bag limit of 2 or an 88-day season with a bag limit of 1.

In Colorado, Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 5. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 2 pintails, 2 canvasback, 3 scaup, and 2 redheads. For scaup, the season length would be 86 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag limit of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may select hunting seasons by zones. Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments.

Colorado, Montana, and New Mexico may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits should be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits:

California, Oregon, and Washington:

Canada geese: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 28), and the last Sunday in January (January 26). The basic daily bag limit is 4 Canada geese.

White-fronted geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 28) and March 10. The daily bag limit is 6 white-fronted geese.

Light geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 28) and March 10. The daily bag limit is 6 light geese.

Brant: Oregon may select a 16-day season, Washington a 16-day season, and California a 30-day season. Days must be consecutive. Washington and California may select hunting seasons by up to two zones. The daily bag limit is 2 brant and is in addition to other goose limits. In Oregon and California, the brant season must end no later than December 15.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming:

Canada geese and brant: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26). The basic daily bag limit is 4 Canada geese and brant.

White-fronted geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 21) and March 10. The daily bag limit is 6 white-fronted geese.

Light geese: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 21) and March 10. The basic daily bag limit is 20 light geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway

Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Arizona: The daily bag limit for dark geese is 3.

California: The daily bag limit for light geese is 10.

Northeastern Zone: The daily bag limit for Canada geese is 6.

Balance-of-State Zone: A 107-day season may be selected with outside dates between the Saturday nearest October 1 (September 28) and March 10. The daily bag limit for Canada geese is 6. In the Sacramento Valley Special Management Area, the season on white-fronted geese must end on or before December 28, and the daily bag limit is 3 white-fronted geese. In the North Coast Special Management Area, a 107-day season for Canada geese may be selected, with outside dates between the Saturday nearest October 1 (September 28) and March 10. Hunting days that occur after the last Sunday in January should be concurrent with Oregon's South Coast Zone.

Idaho:

Zone 2: Idaho will continue to monitor the snow goose hunt that occurs after the last Sunday in January in the American Falls Reservoir/Fort Hall Bottoms and surrounding areas at 3-year intervals.

Nevada: The daily bag limit for Canada geese and brant is 3.

New Mexico: The daily bag limit for Canada geese and brant is 3.

Oregon:

Harney and Lake County Zone: For Lake County only, the daily white-fronted goose bag limit is 1.

Malheur County Zone: The daily bag limit for light geese is 20.

Northwest Zone: For Canada geese outside dates are between the Saturday nearest October 1 (September 28) and March 10. A 3-way split season may be selected. The daily bag limit of Canada geese may not include more than 3 cackling or Aleutian geese.

Northwest Special Permit Zone: For Canada geese outside dates are between the Saturday nearest October 1 (September 28) and March 10. The daily bag limit of Canada geese may not include more than 3 cackling or Aleutian geese and daily bag limit of light geese is 4.

South Coast Zone: A 107-day Canada goose season may be selected, with outside dates between the Saturday nearest October 1 (September 28) and March 10. Hunting days that occur after the last Sunday in January should be concurrent with California's North Coast Special Management Area. A 3-way split season may be selected. The daily bag limit of Canada geese can increase to 6 after the last Sunday in January (January 26).

Utah: The daily bag limit for Canada geese and brant is 3.

Wasatch Front and Washington County Zones: Outside dates are between the Saturday nearest September 24 (September 21) and the first Sunday in February.

Washington: The daily bag limit is 4 geese.

Area 1: Outside dates are between the Saturday nearest October 1 (September 28), and the last Sunday in January (January 26).

Areas 2A and 2B (Southwest Quota Zone): Except for designated areas, there will be no open season on Canada geese. See section on quota zones. In this area, the daily bag limit may include 3 cackling geese. In Southwest Quota Zone Area 2B (Pacific County), the daily bag limit may include 1 Aleutian goose.

Areas 4 and 5: A 107-day season may be selected for Canada geese. A 3-way split season may be selected in Area 4.

Wyoming: The daily bag limit for Canada geese and brant is 3.

Quota Zones

Seasons on geese must end upon attainment of individual quotas of dusky geese allotted to the designated areas of Oregon (90) and Washington (45). The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky geese must not be exceeded. Hunting of geese in those designated areas will be only by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance with those regulations aimed at reducing the take of dusky geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is March 10. Regular goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season with each permit. Nevada may issue up to 2 permits per hunter. Montana and Utah may only issue 1 permit per hunter. Each State's season may open no earlier than the Saturday nearest October 1 (September 28). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 8) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 5) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2014, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season may be 90 days, between October 1 and January 31.

—In North Carolina, no more than 5,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, between the Saturday nearest October 1 (September 28) and January 31.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,200 permits may be issued.

—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire—Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of I–95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

Coastal Zone: That portion south of a line extending east from the Maine-New Brunswick border in Calais at the Route 1 Bridge; then south along Route 1 to the Maine-New Hampshire border in Kittery.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.—Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Northern Zone: That portion of the State east and north of the Inland Zone beginning at the Jct. of Rte.10 and Rte.25A in Orford, east on Rte. 25A to Rte. 25 in Wentworth, southeast on Rte. 25 to Exit 26 of Rte. I–93 in Plymouth, south on Rte. I–93 to Rte. 3 at Exit 24 of Rte. I–93 in Ashland, northeast on Rte. 3 to Rte. 113 in Holderness, north on Rte. 113 to Rte. 113–A in Sandwich, north on Rte. 113–A to Rte. 113 in Tamworth, east on Rte. 113 to Rte. 16 in Chocorua, north on Rte. 16 to Rte. 302 in Conway, east on Rte. 302 to the Maine—New Hampshire border.

Inland Zone: That portion of the State south and west of the Northern Zone, west of the Coastal Zone, and includes the area of Vermont and New Hampshire as described for hunting reciprocity. A person holding a New Hampshire hunting license which allows the taking of migratory waterfowl or a person holding a Vermont resident hunting license which allows the taking of migratory waterfowl may take migratory waterfowl and coots from the following designated area of the Inland Zone: the State of Vermont east of Rte. I–91 at the Massachusetts border, north on Rte. I–91 to Rte. 2, north on Rte. 2 to Rte. 102, north on Rte. 102 to Rte. 253, and north on Rte. 253 to the border with Canada and the area of NH west of Rte. 63 at the MA border, north on Rte. 63 to Rte. 12, north on Rte. 12 to Rte. 12–A, north on Rte. 12A to Rte 10, north on Rte. 10 to Rte. 135, north on Rte. 135 to Rte. 3, north on Rte. 3 to the intersection with the Connecticut River.

Coastal Zone: That portion of the State east of a line beginning at the Maine-New Hampshire border in Rollinsford, then extending to Rte. 4 west to the city of Dover, south to the intersection of Rte. 108, south along Rte. 108 through Madbury, Durham, and Newmarket to the junction of Rte. 85 in Newfields, south to Rte. 101 in Exeter, east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south to the Massachusetts border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: That area east and north of a continuous line extending along U.S. 11 from the New York—Canada International boundary south to NY 9B, south along NY 9B to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to NY 22, north along NY 22 to Washington County Route 153, east along CR 153 to the New York—

Vermont boundary, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to VT 78 at Swanton; VT 78 to VT 36; VT 36 to Maquam Bay on Lake Champlain; along and around the shoreline of Maquam Bay and Hog Island to VT 78 at the West Swanton Bridge; VT 78 to VT 2 in Alburg; VT 2 to the Richelieu River in Alburg; along the east shore of the Richelieu River to the Canadian border.

Interior Zone: That portion of Vermont east of the Lake Champlain Zone and west of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Peotone—Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington—Peotone Road, west along Wilmington—Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff—Lorenzo Road, west along Pine Bluff—Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Duck Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's Road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: That portion of the State south and east of a line extending west from the Indiana border along Interstate 70, south along U.S. Highway 45, to Illinois Route 13, west along Illinois Route 13 to Greenbriar Road, north on Greenbriar Road to Sycamore Road, west on Sycamore Road to N. Reed Station Road, south on N. Reed Station Road to Illinois Route 13, west along Illinois Route 13 to Illinois Route 127, south along Illinois Route 127 to State Forest Road (1025 N), west along State Forest Road to Illinois Route 3, north along Illinois Route 3 to the south bank of the Big Muddy River, west along the south bank of the Big Muddy River to the Mississippi River, west across the Mississippi River to the Missouri border.

South Central Zone: The remainder of the State between the south border of the Central Zone and the North border of the South Zone.

Indiana

North Zone—That part of Indiana north of a line extending east from the Illinois border along State Road 18 to U.S. 31; north along U.S. 31 to U.S. 24; east along U.S. 24 to Huntington; southeast along U.S. 224; south along State Road 5; and east along State Road 124 to the Ohio border.

Central Zone—That part of Indiana south of the North Zone boundary and north of the South Zone boundary.

South Zone—That part of Indiana south of a line extending east from the Illinois border along U.S. 40; south along U.S. 41; east along State Road 58; south along State Road 37 to Bedford; and east along U.S. 50 to the Ohio border.

Iowa

North Zone—That portion of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, east along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, and along U.S. Highway 30 to the Illinois border.

Missouri River Zone—That portion of Iowa west of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, and west along State Highway 175 to the Iowa-Nebraska border.

South Zone—The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West: That portion of the State west and north of a line beginning at the Arkansas-Louisiana border on LA 3; south on LA 3 to Bossier City; then east along I–20 to Minden; then south along LA 7 to Ringgold; then east along LA 4 to Jonesboro; then south along U.S. Hwy 167 to its junction with LA 106; west on LA 106 to Oakdale; then south on U.S. Hwy 165 to junction with U.S. Hwy 190 at Kinder; then west on U.S. Hwy 190/LA 12 to the Texas State border.

East: That portion of the State east and north of a line beginning at the Arkansas-Louisiana border on LA 3; south on LA 3 to Bossier City; then east along I–20 to Minden; then south along LA 7 to Ringgold; then east along LA 4 to Jonesboro; then south along U.S. Hwy 167 to Lafayette; then southeast along U.S. Hwy 90 to the Mississippi State line.

Coastal: Remainder of the State.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line

beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Minnesota

North Duck Zone: That portion of the State north of a line extending east from the North Dakota State line along State Highway 210 to State Highway 23 and east to State Highway 39 and east to the Wisconsin State line at the Oliver Bridge.

South Duck Zone: The portion of the State south of a line extending east from the South Dakota State line along U.S. Highway 212 to Interstate 494 and east to Interstate 94 and east to the Wisconsin State line.

Central Duck Zone: The remainder of the State.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border at Lock and Dam 25; west on Lincoln County Hwy. N to Mo. Hwy. 79; south on Mo. Hwy. 79 to Mo. Hwy. 47; west on Mo. Hwy. 47 to I–70; west on I–70 to the Kansas border.

Middle Zone: The remainder of Missouri not included in other zones.

South Zone: That portion of Missouri south of a line running west from the Illinois border on Mo. Hwy. 74 to Mo. Hwy. 25; south on Mo. Hwy 25. to U.S. Hwy. 62; west on U.S. Hwy. 62 to Mo. Hwy. 53; north on Mo. Hwy. 53 to Mo. Hwy. 51; north on Mo. Hwy. 51 to U.S. Hwy. 60; west on U.S. Hwy. 60 to Mo. Hwy. 21; north on Mo. Hwy. 21 to Mo. Hwy. 72; west on Mo. Hwy. 72 to Mo. Hwy. 32; west on Mo. Hwy. 32 to U.S. Hwy. 65; north on U.S. Hwy. 65 to U.S. Hwy. 54; west on U.S. Hwy. 54 to U.S. Hwy. 71; south on U.S. Hwy. 71 to Jasper County Hwy. M; west on Jasper County Hwy. M to the Kansas border.

Ohio

Lake Erie Marsh Zone: Includes all land and water within the boundaries of the area bordered by Interstate 75 from the Ohio–Michigan line to Interstate 280 to Interstate 80 to the Erie–Lorain County line extending to a line measuring two hundred (200) yards from the shoreline into the waters of Lake Erie and including the waters of Sandusky Bay and Maumee Bay.

North Zone: That portion of the State north of a line beginning at the Ohio–Indiana border and extending east along Interstate 70 to the Ohio–West Virginia border.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 into Portage County to County Highway HH, east on County Highway HH to State Highway 66 and then east on State Highway 66 to U.S. Highway 10, continuing east on U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

Mississippi River Zone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Colorado (Central Flyway Portion)

Northeast Zone: All areas east of Interstate 25 and north of Interstate 70.

Southeast Zone: All areas east of Interstate 25 and south of Interstate 70, and all of El Paso, Pueblo, Huerfano, and Las Animas Counties.

Mountain/Foothills Zone: All areas west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Huerfano, and Las Animas Counties.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Early Zone: That part of Kansas bounded by a line from the Nebraska–Kansas State line south on K–128 to its junction with U.S.–36, then east on U.S.–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with U.S.–24, then west on U.S.–24 to its junction with U.S.–281, then north on U.S.–281 to its junction with U.S.–36, then west on U.S.–36 to its junction with U.S.–183, then south on U.S.–183 to its junction with U.S.–24, then west on U.S.–24 to its junction with K–18, then southeast on K–18 to its junction with U.S.–183, then south on U.S.–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to McPherson County 14th Avenue, then south on McPherson County 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with K–19, then east on K–19 to its junction with U.S.–281, then south on U.S.–281 to its junction with U.S.–54, then west on U.S.–54 to its junction with U.S.–183, then north on U.S.–183 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with U.S.–400, then northwest on U.S.–400 to its junction with U.S.–283, then north on U.S.–283 to its junction with the Nebraska–Kansas State line, then east along the Nebraska–Kansas State line to its junction with K–128.

Late Zone: That part of Kansas bounded by a line from the Nebraska–Kansas State line south on K–128 to its junction with U.S.–36, then east on U.S.–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with U.S.–24, then west on U.S.–24 to its junction with U.S.–281, then north on U.S.–281 to its junction with U.S.–36, then west on U.S.–36 to its junction with U.S.–183,

then south on U.S.–183 to its junction with U.S.–24, then west on U.S.–24 to its junction with K–18, then southeast on K–18 to its junction with U.S.–183, then south on U.S.–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to 14th Avenue, then south on 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with K–19, then east on K–19 to its junction with U.S.–281, then south on U.S.–281 to its junction with U.S.–54, then west on U.S.–54 to its junction with U.S.–183, then north on U.S.–183 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with U.S.–400, then northwest on U.S.–400 to its junction with U.S.–283, then south on U.S.–283 to its junction with the Oklahoma–Kansas State line, then east along the Oklahoma–Kansas State line to its junction with U.S.–77, then north on U.S.–77 to its junction with Butler County, NE 150th Street, then east on Butler County, NE 150th Street to its junction with U.S.–35, then northeast on U.S.–35 to its junction with K–68, then east on K–68 to the Kansas–Missouri State line, then north along the Kansas–Missouri State line to its junction with the Nebraska State line, then west along the Kansas–Nebraska State line to its junction with K–128.

Southeast Zone: That part of Kansas bounded by a line from the Missouri–Kansas State line west on K–68 to its junction with U.S.–35, then southwest on U.S.–35 to its junction with Butler County, NE 150th Street, then west on NE 150th Street until its junction with K–77, then south on K–77 to the Oklahoma–Kansas State line, then east along the Kansas–Oklahoma State line to its junction with the Missouri State line, then north along the Kansas–Missouri State line to its junction with K–68.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Ferus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains—That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. Hwy. 183; south on U.S. Hwy. 183 to U.S. Hwy. 20; west on U.S. Hwy. 20 to NE Hwy. 7; south on NE Hwy. 7 to NE Hwy. 91; southwest on NE Hwy. 91 to NE Hwy. 2; southeast on NE Hwy. 2 to NE Hwy. 92; west on NE Hwy. 92 to NE Hwy. 40; south on NE Hwy. 40 to NE Hwy. 47; south on NE Hwy. 47 to NE Hwy. 23; east on NE Hwy. 23 to U.S. Hwy. 283; and south on U.S. Hwy. 283 to the Kansas-Nebraska border.

Zone 1—Area bounded by designated Federal and State highways and political boundaries beginning at the South Dakota-Nebraska border west of NE Hwy. 26E Spur and north of NE Hwy. 12; those portions of Dixon, Cedar and Knox Counties north of NE Hwy. 12; that portion of Keya Paha County east of U.S. Hwy. 183; and all of Boyd County. Both banks of the Niobrara River in Keya Paha and Boyd counties east of U.S. Hwy. 183 shall be included in Zone 1.

Zone 2—The area south of Zone 1 and north of Zone 3.

Zone 3—Area bounded by designated Federal and State highways, County Roads, and political boundaries beginning at the Wyoming-Nebraska border at the intersection of the Interstate Canal; east along northern borders of Scotts Bluff and Morrill Counties to Broadwater Road; south to Morrill County Rd 94; east to County Rd 135; south to County Rd 88; southeast to County Rd 151; south to County Rd 80; east to County Rd 161; south to County Rd 76; east to County Rd 165; south to Country Rd 167; south to U.S. Hwy. 26; east to County Rd 171; north to County Rd 68; east to County Rd 183; south to County Rd 64; east to County Rd 189; north to County Rd 70; east to County Rd 201; south to County Rd 60A; east to County Rd 203; south to County Rd 52; east to Keith County Line; east along the northern boundaries of Keith and Lincoln Counties to NE Hwy. 97; south to U.S. Hwy 83; south to E Hall School Rd; east to N Airport Road; south to U.S. Hwy. 30; east to Merrick County Rd 13; north to County Rd O; east to NE Hwy. 14; north to NE Hwy. 52; west and north to NE Hwy. 91; west to U.S. Hwy. 281; south to NE Hwy. 22; west to NE Hwy. 11; northwest to NE Hwy. 91; west to U.S. Hwy. 183; south to Round Valley Rd; west to Sargent River Rd; west to Sargent Rd; west to Milburn Rd; north to Blaine County Line; east to Loup County Line; north to NE Hwy. 91; west to North Loup Spur Rd; north to North Loup River Rd; east to Pleasant Valley/Worth Rd; east to Loup County Line; north to Loup-Brown county line; east along northern boundaries of Loup and Garfield Counties to Cedar River Road; south to NE Hwy. 70; east to U.S. Hwy. 281; north to NE Hwy. 70; east to NE Hwy. 14; south to NE Hwy. 39; southeast to NE Hwy. 22; east to U.S. Hwy. 81; southeast to U.S. Hwy. 30; east to U.S. Hwy. 75; north to the Washington County line; east to the Iowa–Nebraska border; south to the Missouri-Nebraska border; south to Kansas–Nebraska border; west along Kansas–Nebraska border to Colorado–Nebraska border; north and west to Wyoming-Nebraska border; north to intersection of Interstate Canal; and excluding that area in Zone 4.

Zone 4—Area encompassed by designated Federal and State highways and County Roads beginning at the intersection of NE Hwy. 8 and U.S. Hwy. 75; north to U.S. Hwy. 136; east to the intersection of U.S. Hwy. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE Hwy. 2; west to U.S. Hwy. 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north to NE Hwy. 66; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to NE Hwy. Spur 12F; south to Butler County Rd 30; east to County Rd X; south to County Rd 27; west to County Rd W; south to County Rd 26; east to County Rd X; south to County Rd 21 (Seward County Line); west to NE Hwy. 15; north to County Rd 34; west to County Rd J; south to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to Polk County Rd C; north to NE Hwy. 92; west to U.S. Hwy. 30; west to Merrick County Rd 17; south to Hordlake Road; southeast to Prairie Island Road; southeast to Hamilton County Rd T; south to NE Hwy. 66; west to NE Hwy. 14; south to County Rd 22; west to County Rd M; south to County Rd 21; west to County Rd K; south to U.S. Hwy. 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd (Hall/Hamilton county line); south to Giltner Rd; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy. 10; north to Kearney County Rd R and Phelps County Rd 742; west to U.S. Hwy. 283; south to U.S. Hwy 34; east to U.S. Hwy. 136; east to U.S. Hwy. 183; north to NE Hwy. 4; east to NE Hwy. 10; south to U.S. Hwy. 136; east to NE Hwy. 14; south to NE Hwy. 8; east to U.S. Hwy. 81; north to NE Hwy. 4; east to NE

Hwy. 15; south to U.S. Hwy. 136; east to NE Hwy. 103; south to NE Hwy. 8; east to U.S. Hwy. 75.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains Unit: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, east along OK 33 to OK 18, north along OK 18 to OK 51, west along OK 51 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Zone: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east on U.S. 14 to Blunt, south on the Blunt–Canning Rd to SD 34, east and south on SD 34 to SD 50 at Lee's Corner, south on SD 50 to I–90, east on I–90 to SD 50, south on SD 50 to SD 44, west on SD 44 across the Platte–Winner bridge to SD 47, south on SD 47 to U.S. 18, east on U.S. 18 to SD 47, south on SD 47 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47 and south of SD 44; Charles Mix County south of SD 44 to the Douglas County line; south on SD 50 to Geddes; east on the Geddes Highway to U.S. 281; south on U.S. 281 and U.S. 18 to SD 50; south and east on SD 50 to the Bon Homme County line; the Counties of Bon Homme, Yankton, and Clay south of SD 50; and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone C1: Big Horn, Converse, Goshen, Hot Springs, Natrona, Park, Platte, and Washakie Counties; and Fremont County excluding the portions west or south of the Continental Divide.

Zone C2: Campbell, Crook, Johnson, Niobrara, Sheridan, and Weston Counties.

Zone C3: Albany and Laramie Counties; and that portion of Carbon County east of the Continental Divide.

Pacific Flyway

Arizona

Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California–Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California–Nevada State line; north along the California–Nevada State line to the junction of the California–Nevada–Oregon State lines; west along the California–Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino–Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army–Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe–Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade–Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private in-holdings; Bannock County; Bingham County, except that

portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Adams, Bear Lake, Benewah, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Shoshone, Teton, and Valley Counties; Bingham County within the Blackfoot Reservoir drainage; Caribou County, except the Fort Hall Indian Reservation; and Power County west of State Highway 37 and State Highway 39.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Nevada

Northeast Zone: All of Elko and White Pine Counties.

Northwest Zone: All of Carson City, Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and Washoe Counties.

South Zone: All of Clark and Lincoln County.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Wyoming

Snake River Zone: Beginning at the south boundary of Yellowstone National Park and the Continental Divide; south along the Continental Divide to Union Pass and the Union Pass Road (U.S.F.S. Road 600); west and south along the Union Pass Road to U.S. F.S. Road 605; south along U.S.F.S. Road 605 to the Bridger-Teton National Forest boundary; along the national forest boundary to the Idaho State line; north along the Idaho State line to the south boundary of Yellowstone National Park; east along the Yellowstone National Park boundary to the Continental Divide.

Balance of State Zone: Balance of the Pacific Flyway in Wyoming outside the Snake River Zone.

Geese

Atlantic Flyway

Connecticut

AP Unit: Litchfield County and the portion of Hartford County west of a line beginning at the Massachusetts border in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

AFRP Unit: Starting at the intersection of I–95 and the Quinnipiac River, north on the Quinnipiac River to its intersection with I–91, north on I–91 to I–691, west on I–691 to the Hartford County line, and encompassing the rest of New Haven County and Fairfield County in its entirety.

NAP H–Unit: All of the rest of the State not included in the AP or AFRP descriptions above.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maine

Same zones as for ducks.

Maryland

Resident Population (RP) Zone: Garrett, Allegany, Washington, Frederick, and Montgomery Counties; that portion of Prince George's County west of Route 3 and Route 301; that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County west of Route 31 to the intersection of Route 97, and west of Route 97 to the Pennsylvania line.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central and Coastal Zones (see duck zones).

AP Zone: The Western Zone (see duck zones).

Special Late Season Area: The Central Zone and that portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal, north to the New Hampshire line.

New Hampshire

Same zones as for ducks.

New Jersey

North: That portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South: That portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Goose Area: The same as the Lake Champlain Waterfowl Hunting Zone, which is that area of New York State lying east and north of a continuous line extending along Route 11 from the New York-Canada International boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont boundary.

Northeast Goose Area: The same as the Northeastern Waterfowl Hunting Zone, which is that area of New York State lying north of a continuous line

extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 22 at Greenwich Junction, north along Route 22 to Washington County Route 153, east along CR 153 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

East Central Goose Area: That area of New York State lying inside of a continuous line extending from Interstate Route 81 in Cicero, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany County Route 252, northwest along Route 252 to Schenectady County Route 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to Route 7 in Oneonta, southwest along Route 7 to Route 79 to Interstate Route 88 near Harpursville, west along Route 88 to Interstate Route 81, north along Route 81 to the point of beginning.

West Central Goose Area: That area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara-Orleans County boundary) meets the International boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara County Route 271, south along Route 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to Route 5, east along Route 5 to Crittenden-Murrays Corners Road, south on Crittenden-Murrays Corners Road to the NYS Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, northeast along Route 39 to Route 20A, northeast along Route 20A to Route 20, east along Route 20 to Route 364 (near Canandaigua), south and east along Route 364 to Yates County Route 18 (Italy Valley Road), southwest along Route 18 to Yates County Route 34, east along Route 34 to Yates County Route 32, south along Route 32 to Steuben County Route 122, south along Route 122 to Route 53, south along Route 53 to Steuben County Route 74, east along Route 74 to Route 54A (near Pulteney), south along Route 54A to Steuben County Route 87, east along Route 87 to Steuben County Route 96, east along Route 96 to Steuben County Route 114, east along Route 114 to Schuyler County Route 23, east and southeast along Route 23 to Schuyler County Route 28, southeast along Route 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the International boundary with Canada, south and west along the International boundary to the point of beginning.

Hudson Valley Goose Area: That area of New York State lying within a continuous line extending from Route 4 at the New York-Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany County Route 307, southeast along Route 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to Albany County Route 301 at Clarksville, southeast along Route 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts Content Road (Greene County Route 31), southeast along Route 31 to Route 32, south along Route 32 to Greene County Route 23A, east along Route 23A to Interstate Route 87 (the NYS Thruway), south along Route 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York-Pennsylvania boundary, southeast along the New York-Pennsylvania boundary to the New York-New Jersey boundary, southeast along the New York-New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange County Route 5, northeast along Orange County Route 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange County Route 107 (Quaker Avenue), east along Route 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of Moodna Creek to the New Windsor-Cornwall town boundary, northeast along the New Windsor-Cornwall town boundary to the Orange-Dutchess County boundary (middle of the Hudson River), north along the county boundary to Interstate Route 84, east along Route 84 to the Dutchess-Putnam County boundary, east along the county boundary to the New York-Connecticut boundary, north along the New York-

Connecticut boundary to the New York-Massachusetts boundary, north along the New York-Massachusetts boundary to the New York-Vermont boundary, north to the point of beginning.

Eastern Long Island Goose Area (NAP High Harvest Area): That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (RP Area): That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area): That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

South Goose Area: The remainder of New York State, excluding New York City.

Special Late Canada Goose Area: That area of the Central Long Island Goose Area lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following Counties or portions of Counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Montgomery (that portion west of NC 109), Northampton, Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following Counties or portions of Counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following Counties or portions of Counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for SJBP Zone and the area east of route SR 97 from the Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, and south of I–80 to the New Jersey State line.

SJBP Zone: The area north of I–80 and west of I–79 including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

AP Zone: The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County, that portion of Orangeburg County north of SC Highway 6, and that portion of Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and that portion west of the Santee Dam.

Vermont

Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary and east of the following line: the "Blue Ridge" (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

Northwest Zone: Baxter, Benton, Boone, Carroll, Conway, Crawford, Faulkner, Franklin, Johnson, Logan, Madison, Marion, Newton, Perry, Pope, Pulaski, Searcy, Sebastian, Scott, Van Buren, Washington, and Yell Counties.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Interstate 80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Goose Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: Same zones as for ducks.

South Central Zone: Same zones as for ducks.

Indiana

Same zones as for ducks but in addition:

Special Canada Goose Seasons

Late Canada Goose Season Zone: That part of the State encompassed by the following Counties: Steuben, Lagrange, Elkhart, St. Joseph, La Porte, Starke, Marshall, Kosciusko, Noble, De Kalb, Allen, Whitley, Huntington, Wells, Adams, Boone, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, Shelby, Vermillion, Parke, Vigo, Clay, Sullivan, and Greene.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Louisiana

Same zones as for ducks.

Michigan

North Zone—Same as North duck zone.

Middle Zone—Same as Middle duck zone.

South Zone—Same as South duck zone.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan Late Season Canada Goose Zone: Same as the South Duck Zone excluding Tuscola/Huron Goose Management Unit (GMU), Allegan County GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

Same zones as for ducks but in addition:

Rochester Goose Zone: That part of the State within the following described boundary: Beginning at the intersection of State Trunk Highway (STH) 247 and County State Aid Highway (CSAH) 4, Wabasha County; thence along CSAH 4 to CSAH 10, Olmsted County; thence along CSAH 10 to CSAH 9, Olmsted County; thence along CSAH 9 to CSAH 22, Winona County; thence along CSAH 22 to STH 74; thence along STH 74 to STH 30; thence along STH 30 to CSAH 13, Dodge County; thence along CSAH 13 to U.S. Highway 14; thence along U.S. Highway 14 to STH 57; thence along STH 57 to CSAH 24, Dodge County; thence along CSAH 24 to CSAH 13, Olmsted County; thence along CSAH 13 to U.S. Highway 52; thence along U.S. Highway 52 to CSAH 12, Olmsted County; thence along CSAH 12 to STH 247; thence along STH 247 to the point of beginning.

Missouri

Same zones as for ducks.

Ohio

Lake Erie Goose Zone: That portion of Ohio north of a line beginning at the Michigan border and extending south along Interstate 75 to Interstate 280, south on Interstate 280 to Interstate 80, and east on Interstate 80 to the Pennsylvania border.

North Zone: That portion of Ohio north of a line beginning at the Indiana border and extending east along Interstate 70 to the West Virginia border excluding the portion of Ohio within the Lake Erie Goose Zone.

South Zone: The remainder of Ohio.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of

Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Exterior Zone: That portion of the State not included in the Horicon Zone.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All areas in Boulder, Larimer and Weld Counties from the Continental Divide east along the Wyoming border to U.S. 85, south on U.S. 85 to the Adams County line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.

North Park Area: Jackson County.

South Park and San Luis Valley Area: All of Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Rio Grande and Teller Counties, and those portions of Saguache, Mineral and Hinsdale Counties east of the Continental Divide.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

Niobrara Unit: That area contained within and bounded by the intersection of the South Dakota State line and the eastern Cherry County line, south along the Cherry County line to the Niobrara River, east to the Norden Road, south on the Norden Road to U.S. Hwy 20, east along U.S. Hwy 20 to NE Hwy 14, north along NE Hwy 14 to NE Hwy 59 and County Road 872, west along County Road 872 to the Knox County Line, north along the Knox County Line to the South Dakota State line. Where the Niobrara River forms the boundary, both banks of the river are included in the Niobrara Unit.

East Unit: That area north and east of U.S. 81 at the Kansas-Nebraska State line, north to NE Hwy 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area north and west of U.S. 81 at the Kansas-Nebraska State line, north to NE Hwy 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas-Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer-Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, south along NE 61 to NE 92, west along NE 92 to U.S. Hwy 26, south along U.S. Hwy 26 to Keith County Line, south along Keith County Line to the Colorado State line.

Panhandle Unit: That area north and west of Keith-Deuel County Line at the Nebraska-Colorado State line, north along the Keith County Line to U.S. Hwy 26, west to NE Hwy 92, east to NE Hwy 61, north along NE Hwy 61 to NE Hwy 2, west along NE 2 to the corner formed by Garden-Grant-Sheridan Counties, west along the north border of Garden, Morrill, and Scotts Bluff Counties to the intersection of the Interstate Canal, west to the Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 14, south to NE 66, east to U.S. 81, north to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Missouri River Canada Goose Zone: The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; thence north on ND Hwy 6 to I–94; thence west on I–94 to ND Hwy 49; thence north on ND Hwy 49 to ND Hwy 200; thence north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); thence north on that section line to the southern shoreline to Lake Sakakawea; thence east along the southern shoreline (including Mallard Island) of Lake Sakakawea to U.S. Hwy 83; thence south on U.S. Hwy 83 to ND Hwy 200; thence east on ND Hwy 200 to ND Hwy 41; thence south on ND Hwy 41 to U.S. Hwy 83; thence south on U.S. Hwy 83 to I–94; thence east on I–94 to U.S. Hwy 83; thence south on U.S. Hwy 83 to the South Dakota border; thence west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Canada Geese

Unit 1: the Counties of Campbell, Marshall, Roberts, Day, Clark, Codington, Grant, Hamlin, Deuel, Walworth, that portion of Dewey County north of Bureau of Indian Affairs Road 8, Bureau of Indian Affairs Road 9, and the section of U.S. Highway 212 east of the Bureau of Indian Affairs Road 8 junction, that portion of Potter County east of U.S. Highway 83, that portion of Sully County east of U.S. Highway 83, portions of Hyde, Buffalo, Brule, and Charles Mix—counties north and east of a line beginning at the Hughes-Hyde county line on State Highway 34, east to Lees Boulevard, southeast to the State Highway 34, east 7 miles to 350th Avenue, south to Interstate 90 on 350th Avenue, south and east on State Highway 50 to Geddes, east on 285th Street to U.S. Highway 281, north on

U.S. Highway 281 to the Charles Mix-Douglas county boundary, that portion of Bone Homme County north of State Highway 50, that portion of Fall River County west of State Highway 71 and U.S. Highway 385, that portion of Custer County west of State Highway 79 and north of French Creek, McPherson, Edmunds, Kingsbury, Brookings, Lake, Moody, Miner, Faulk, Hand, Jerauld, , Douglas, Hutchinson, Turner, Lincoln, Union, Clay, Yankton, Aurora, Beadle, Davison, Hanson, Sanborn, Spink, Brown, Harding, Butte, Lawrence, Meade, Pennington, Shannon, Jackson, Mellette, Todd, Jones, Haakon, Corson, Ziebach, McCook, and Minnehaha.

Unit 2: Remainder of South Dakota.

Unit 3: Bennett County.

Texas

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas-Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion)

Dark Geese

Zone G1: Big Horn, Converse, Hot Springs, Natrona, Park, and Washakie Counties; and Fremont County excluding those portions south or west of the continental Divide.

Zone G1A: Goshen and Platte Counties.

Zone G2: Campbell, Crook, Johnson, Niobrara, Sheridan, and Weston Counties.

Zone G3: Albany and Laramie Counties; and that portion of Carbon County east of the Continental Divide.

Pacific Flyway

Arizona

North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management Units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino–Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

North Coast Special Management Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area: That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes–Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Canada Geese and Brant

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private in-holdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Adams, Bear Lake, Benewah, Blaine, Bonner, Bonneville, Boundary,

Butte, Camas, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Shoshone, Teton, and Valley Counties; Bingham County within the Blackfoot Reservoir drainage; Caribou County, except the Fort Hall Indian Reservation; and Power County west of State Highway 37 and State Highway 39.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Light Geese

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private in-holdings; Bannock County; Bingham County east of the west bank of the Snake River and the American Falls Reservoir bluff, except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Bingham County west of the west bank of the Snake River and the American Falls Reservoir bluff; Power County north of Interstate 86 and west of the west bank of the Snake River and the American Falls Reservoir bluff.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Zone 4: Adams, Bear Lake, Benewah, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Shoshone, Teton, and Valley Counties; Caribou County, except the Fort Hall Indian Reservation; Bingham County within the Blackfoot Reservoir drainage; and Power County south of Interstate 86, east of the west bank of the Snake River and the American Falls Reservoir bluff, and west of State Highway 37 and State Highway 39.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Northeast Zone: All of Elko and White Pine Counties.

Northwest Zone: All of Carson City, Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and Washoe Counties.

South Zone: All of Clark and Lincoln County.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Those portions of Douglas, Coos, and Curry Counties east of Highway 101, and Josephine and Jackson Counties.

South Coast Zone: Those portions of Douglas, Coos, and Curry Counties west of Highway 101.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to Milepost 19; then north to the intersection of the Benton and Lincoln County line; then north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County; then west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Tillamook County Management Area: All of Tillamook County. The following portion of the Tillamook County Management Area is closed to goose hunting beginning at the point where Old Woods Rd crosses the south shores of Horn Creek, north on Old Woods Rd to Sand Lake Rd at Woods, north on Sand Lake Rd to the intersection with McPhillips Dr., due west (~200 yards) from the intersection to the Pacific coastline, south on the Pacific coastline to Neskowin Creek, east along the north shores of Neskowin Creek and then Hawk Creek to Salem Ave, east on Salem Ave in Neskowin to Hawk Ave, east on Hawk Ave to Hwy 101, north on Hwy 101 to Resort Dr., north on Resort Dr. to a point due west of the south shores of Horn Creek at its confluence with the Nestucca River, due east (~80 yards) across the Nestucca River to the south shores of Horn Creek, east along the south shores of Horn Creek to the point of beginning.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney and Lake County Zone: All of Harney and Lake Counties.

Klamath County Zone: All of Klamath County.

Malheur County Zone: All of Malheur County.

Utah

Northern Utah Zone: That portion of Box Elder County beginning at the Weber-Box Elder County line, north along the Box Elder County line to the Utah-Idaho State line; west on this line to Stone, Idaho-Snowville, Utah road; southwest on this road to Locomotive Springs Wildlife Management Area; east on the county road, past Monument Point and across Salt Wells Flat, to the intersection with Promontory Road; south on Promontory Road to a point directly west of the northwest corner of the Bear River Migratory Bird Refuge boundary; east along an imaginary line to the northwest corner of the Refuge boundary; south and east along the Refuge boundary to the southeast corner of the boundary; northeast along the boundary to the Perry access road; east on the Perry access road to I–15; south on I–15 to the Weber-Box Elder County line.

Wasatch Front Zone: All of Davis, Salt Lake, Utah, and Weber Counties.

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone): Pacific County.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White

Salmon River that are not included in Area 4.

Brant

Pacific Flyway

California

North Coast Zone: Del Norte, Humboldt and Mendocino Counties.

South Coast Zone: Balance of the State.

Washington

Puget Sound Zone: Skagit County.

Coastal Zone: Pacific County.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80, and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary; then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge; then west along a line to Promontory Road; then north on Promontory Road to the intersection of SR 83; then north on SR 83 to I–84; then north and west on I–84 to State Hwy 30; then west on State Hwy 30 to the Nevada-Utah State line; then south on the Nevada-Utah State line to I–80.

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Diamond Darter (Crystallaria cincotta); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2013–0019; 4500030114]

RIN 1018–AZ40

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Diamond Darter (*Crystallaria cincotta*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the diamond darter (*Crystallaria cincotta*), a small fish in West Virginia, under the Endangered Species Act (Act). In total, approximately 197.1 river kilometers (122.5 river miles) in Kanawha and Clay Counties, West Virginia, and Edmonson, Hart, and Green Counties, Kentucky, are being designated as critical habitat. The effect of this regulation is to designate critical habitat for the diamond darter under the Act.

DATES: This rule becomes effective on September 23, 2013.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and at the West Virginia Field Office. Comments and materials received, as well as supporting documentation used in the preparation of this rule, are available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, West Virginia Field Office, 694 Beverly Pike, Elkins, West Virginia 26241. The Field Office can be reached by telephone 304–636–6586 or by facsimile 304–636–7824.

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/westvirginiafieldoffice, www.regulations.gov* at Docket No. FWS–R5–ES–2013–0019, and at the West Virginia Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation are also available at the U.S. Fish and Wildlife Service Web site and Field Office set out above, and may also be included at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John Schmidt, Acting Field Supervisor, West Virginia Field Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a final rule to designate critical habitat for the diamond darter. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), we must designate critical habitat, to the maximum extent prudent and determinable, for any species we determine to be endangered or threatened. Designation of critical habitat can only be completed by issuing a rule.

We listed the diamond darter as an endangered species on July 26, 2013 (78 FR 45074). On July 26, 2012, we published in the **Federal Register** a proposed critical habitat designation for the diamond darter (77 FR 43906).

This rule consists of: A final rule to designate critical habitat for the diamond darter. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

Here we are designating, in total, approximately 197.1 river kilometers (km) (122.5 river miles (mi)) as critical habitat for the species. The critical habitat is located in Kanawha and Clay Counties, West Virginia, and in Edmonson, Hart, and Green Counties, Kentucky.

We have prepared an economic analysis of the designation of critical habitat. We have prepared an analysis of the economic impacts of the critical habitat designation and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on March 29, 2013 (78 FR 19172), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis (FEA) concurrently with this final determination.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We asked knowledgeable individuals with the scientific expertise to review our technical assumptions, analysis, and whether we had used the best available data. These peer reviewers generally concurred with our methods and conclusions, and they provided additional information, clarifications, and suggestions to improve this final rule. The information we received from the peer review process is incorporated in this final revised designation. We also considered all comments and information received from the public during the comment periods and incorporated those comments, as appropriate, into this final rule.

Previous Federal Actions

The diamond darter was first identified as a candidate for protection under the Act in the November 9, 2009, **Federal Register** (74 FR 57804). As a candidate, it was assigned a listing priority number (LPN) of 2. Candidate species are assigned LPNs based on the magnitude and immediacy of threats and their taxonomic status. The lower the LPN, the higher the priority is for determining appropriate action for the species using our available resources. An LPN of 2 reflects that the threats to the diamond darter are both imminent and high in magnitude. It also reflects the taxonomic classification of the diamond darter as a full species. We retained the LPN of 2 in our subsequent Notices of Review dated November 10, 2010 (75 FR 69222), and October 26, 2011 (76 FR 66370). On July 26, 2012 (77 FR 43906), we published a proposed rule to list the diamond darter as endangered. On July 26, 2013 (78 FR 45074), we published a final rule to list the diamond darter as endangered.

Background

The diamond darter is a small fish that is a member of the perch family (Percidae). The diamond darter is overall translucent and is a silvery white on the underside of the body and head. It has four wide, olive-brown saddles on the back and upper side (Welsh *et al.* 2008, p. 1). Diamond darters are most active during the night and may stay partially buried in the stream substrates during the day (Welsh 2008, p. 10; Welsh 2009c, p. 1). Adult diamond darters are benthic invertivores, feeding primarily on stream bottom-dwelling invertebrates (NatureServe 2008, p. 8). The diamond darter was historically distributed throughout the Ohio River Basin including the Muskingum River in Ohio; the Ohio River in Ohio, Kentucky, and Indiana; the Green River in Kentucky; and the Cumberland River Drainage in Kentucky and Tennessee. The diamond darter has been extirpated from all these streams and is now known to occur only within the lower Elk River in West Virginia. More detailed information on the diamond

darter, including its taxonomy, species description, and current and historical distribution, and a summary of its life history and habitat can be found in the final listing rule published on July 26, 2013 (78 FR 45074).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the diamond darter during two comment periods. The first comment period opened with the publication of the proposed rule (77 FR 43906) on July 26, 2012, and closed on September 25, 2012. In a notice published on March 29, 2013 (78 FR 19172), we also requested comments on the proposed critical habitat designation and associated DEA during a comment period that opened March 29, 2013, and closed on April 29, 2013. We did not receive any requests for a public hearing. We also contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties, and invited them to comment on the proposed rule and DEA during these comment periods.

During the first comment period, we received 11 letters that provided comments specific to the proposed critical habitat designation. During the second comment period, we received 10 comment letters addressing the proposed critical habitat designation or the DEA. Comments received were grouped into general issues specifically relating to the proposed critical habitat designation for the diamond darter, and are addressed in the following summary and incorporated into the final rule as appropriate. Comments addressing only the proposed listing are addressed separately in the final listing rule (78 FR 45074, July 26, 2013).

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from five knowledgeable individuals with scientific expertise on the diamond darter and its habitat, biological needs, and threats. We received individual responses from three of the peer reviewers. The response from one peer reviewer was incorporated into comments submitted by his employer, the West Virginia Division of Natural Resources (WVDNR). Those comments are addressed below under *Comments from States.*

We reviewed all comments received from the peer reviewers for substantive and new information regarding critical habitat for the diamond darter. Two of the peer reviewers explicitly stated that: (1) They concurred with the proposed critical habitat designation; (2) the proposed rule appropriately designated the lower 45 km (28 mi) of the Elk River as critical habitat; and (3) scientific evidence provided in the proposed rule supported our conclusion that this reach of river is needed to protect the only remaining population of the diamond darter. One peer reviewer also commented that the reach of the Green River proposed for unoccupied critical habitat was a logical choice for designation, in that it was more likely than any other historical habitat to offer the potential for reestablishment of a second population of the diamond darter. Another peer reviewer suggested that additional areas should be designated as critical habitat.

(1) *Comment:* The only known collection of a young diamond darter was at the extreme lower end of the proposed critical habitat on the Elk River in West Virginia. Although the extent of diamond darter larval drift is unknown, it may include portions of the Kanawha River below the mouth of the Elk River, which is not included in the proposed designation. The extent of potential downstream larval drift should be considered in the critical habitat designation. Additional research is needed to define how far larval drift occurs and what larvae are eating in the wild.

Our Response: We concur that it is important to consider all the diamond darter's life stages, including the larval stage, when designating critical habitat. However, very little is known about the natural history of the larval and juvenile life stages of the diamond darter. As the commenter stated, the only known record of a young diamond darter captured in the wild was from benthic trawl surveys conducted in the Elk River somewhere near the confluence with the Kanawha River in West Virginia. Despite repeated requests to the researcher and his staff who captured the young diamond darter, we have been unable to more precisely determine the exact location of this capture or the habitat conditions at the capture location. Additionally, no scientific data is available on how long diamond darter larvae remain in a pelagic phase (drifting in open water) or how far they may drift downstream after they hatch. We are also unaware of any scientific data available as to where diamond darters breed in the Elk River. We concur that additional research is needed to quantify diamond darter larval and breeding requirements. However, we have used the best available scientific data to define the extent of these life history requirements. Section 3(5) of the Act requires the Service to specify the "specific areas" within the geographical area occupied by the species at the time of listing that are essential to the species' conservation or those areas outside the geographical areas occupied by the species at the time of listing that are essential for the species' conservation. Therefore, we have designated critical habitat based on the best available data at this time.

In both our proposed and final critical habitat designation for the Elk River, we included some areas upstream and downstream of known capture locations that have suitable habitat for the species. These areas are contiguous with known and documented capture sites, have similar habitat characteristics, have no barriers to dispersal, and are within general darter dispersal capabilities. This should allow for some upstream migrations of breeding and spawning adult diamond darters, as well as some downstream migration of larvae. However, we do not have scientific data available to be able to determine whether the aforementioned capture location of the juvenile diamond darter is downstream of or within the critical habitat designation. The reach of the Elk River downstream of the designated critical habitat to the confluence with the Kanawha River is affected by impoundment from the Winfield Lock and Dam on the Kanawha River, and is dredged by the U.S. Army Corps of Engineers (ACOE). Therefore, this area was not designated as critical habitat because it did not contain the required physical and biological features (PBFs). We have incorporated additional discussion about the uncertainty surrounding the location of the juvenile diamond darter capture, as well information about the potential for larval drift, in the final rule. Please refer to our response to comment #1 in the final listing rule (78 FR 45074, July 26, 2013) for more information on this topic.

We also note in the final critical habitat rule that habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Similarly, critical habitat designations made on the basis of the best available scientific data at the time of designation will not control the direction and substance of future

recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome. When additional information becomes available about diamond darter larval requirements, or if the location of the previous capture can be more precisely determined, we will fully consider that information during future diamond darter consultation and recovery efforts, and may revise the critical habitat designation, if necessary.

(2) *Comment:* The Service should consider designating the lower free-flowing portion of the Big South Fork of the Cumberland River as unoccupied critical habitat, similar to the Green River. Although the Big South Fork of the Cumberland River may not be quite as high in quality as the Green River, it meets the criteria for designation as cited, particularly in supporting rare and sensitive species, including streamline chubs (*Erimystax dissimilis*) and tuxedo darters (*Etheostoma lemniscatum*).

Our Response: We concur that the lower portions of the Big South Fork of the Cumberland River currently have suitable habitat for the diamond darter in that the river is free-flowing and has riffle-pool complexes and areas with suitable substrates. It also supports other rare species with similar life-history requirements, and the National Park Service provides some protections. Based on this information, we evaluated this area for inclusion in the designation as unoccupied critical habitat. To be included in the unoccupied critical habitat designation, an area must have historical darter occurrences that have been confirmed to be diamond darter. Confirmation of the historical occurrences is completed through examination of available museum specimens.

One specimen of a *Crystallaria* species was known to be collected from the Big South Fork of the Cumberland River around 1870, but very little information is available about the actual specimen. We note that it was one of the earliest collections of any *Crystallaria* species, and occurred at a time when many fishes from the Ohio River Basin were first being captured, identified, and described. Cope, who originally collected this specimen, did not formally publish any records of his *Crystallaria* capture in the Big South Fork of the Cumberland River (Comisky and Etnier 1972, p. 143). The first reference to this specimen occurred in 1906 when Fowler began curating and cataloguing Cope's collection of percid specimens after his death (Fowler 1906, p. 524). In a subsequent taxonomic review of fish from Michigan, Fowler determined that some of Cope's other *Crystallaria* specimens had been incorrectly identified (Fowler 1918, pp. 48–49). This is not surprising given the advances in fish taxonomy that occurred between 1870 and 1918. Thus, it is possible that Cope's Big South Fork of the Cumberland River *Crystallaria* specimen was also incorrectly identified. However, we searched published literature and found no records of Fowler or any subsequent taxonomists confirming or refuting Cope's original identification of this specimen, or any written descriptions or illustrations of this specimen that would have allowed us to verify its accuracy. Additionally, we have been unable to locate this specimen.

In 1918, Fowler noted that some of Cope's specimens were no longer extant, and that some were in poor preservation (Fowler 1918, pp. 2–51). The Big South Fork of the Cumberland River *Crystallaria* specimen is apparently one of those specimens that was lost or degraded since its original collection, and is no longer extant. Therefore, it cannot be inspected and verified. Conversely, museum specimens from surveys conducted in 1890 in other portions of the Cumberland River watershed are extant and have been independently reviewed and verified to be the diamond darter (Welsh and Wood 2008, p. 6). However, as described above, we do not have confirmed historical records that the diamond darter existed in the Big South Fork of the Cumberland River. Therefore, the Big South Fork of the Cumberland River did not meet the inclusion criteria for unoccupied critical habitat. However, excluding this area from critical habitat designation does not mean that it may not be important or appropriate for future diamond darter recovery efforts.

Comments From States

Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition." We received comments from two State agencies, the WVDNR and the West Virginia Department of Environmental Protection (WVDEP). Comments received from the State regarding the proposal to designate critical habitat are summarized below, followed by our responses.

The WVDNR stated that the Service provided an excellent evaluation in support of the proposed primary constituent elements (PCEs), and concurred that these components are present in the Elk River and necessary for the continued success of the diamond darter. The WVDNR also concurred with the proposed designation of the 45-km (28-mi) reach of the Elk River as critical habitat. The agency confirmed that this reach of the Elk River supported all the PCEs, and further commented that its survey data from Elk River tributaries supported our conclusion that the diamond darter rarely or never uses these tributary areas. Although the agency commented that the Service correctly proposed to designate critical habitat in the Green River based on the criteria provided, the agency deferred any additional comments on that portion of the diamond darter's habitat to the Kentucky Department of Fish and Wildlife Resources (KYDFWR). The KYDFWR did not formally comment on the proposed rule. The WVDEP provided two substantive comments regarding the proposed critical habitat, as detailed below.

(3) *Comment:* The WVDEP asserted that the primary cause of the diamond darter's decline was habitat loss and isolation of the population through the historical impoundment of streams the species inhabited. The agency therefore suggested that PCE 3, which emphasizes the darter's need for flows unimpeded by impoundment, should be the first priority PCE considered essential to the diamond darter's persistence.

Our Response: We concur that impoundment was one of the most direct and dramatic historical causes of diamond darter habitat loss. Water quality degradation and siltation also played key roles. See our response to comment #4 in the final listing rule (78 FR 45074, July 26, 2013) for more information regarding the role of impoundment and other factors in the decline and extirpation of diamond darter populations. While we agree that impoundment is an important cause of diamond darter habitat loss, we do not concur that the order of the PCEs should be changed. The diamond darter requires all the listed PCEs to survive and recover, and the PCEs are not listed in order of priority. Rather, we have listed the PCEs in an order that supports the species' basic life-history requirements. To support the diamond darter, there must first be a stream located in the historical range of the species. The stream must also be of the correct size (stream order) and have the correct substrates. For example, small headwater streams, or naturally slow-moving streams with predominately silt substrates, even if unimpounded, would not support the diamond darter.

Therefore, our PCEs describe first the type and location of stream habitat the diamond darter requires, second the type of substrate, and third the need for relatively natural flows unimpeded by impoundment. We have thus retained the original order of the PCEs.

(4) *Comment:* The WVDEP commented that the concept of embeddedness described in the proposed rule is inconsistent with the species' habitat requirements. The agency stated that, because the diamond darter occupies habitats with ample sand, some embeddedness of the larger particles in these areas is expected and quite necessary. The agency further suggested that we clarify the concepts of siltation versus sedimentation since it would appear that the diamond darter is susceptible to the effects of siltation, which is the accumulation of fines, or particles smaller than sand, while being dependent upon a relative abundance of sand to fulfill life-history functions. The agency suggested that PCE 2 should be clarified with regard to these two issues.

Our Response: We concur with the WVDEP that the diamond darter is susceptible to the effects of siltation, which is the accumulation of fines, or particles smaller than sand, while being dependent upon a relative abundance of natural sand to fulfill life-history functions. We have, therefore, reviewed our use of the terms "siltation" and "sedimentation" in the final critical habitat rule and clarified that the diamond darter requires substrates that are not embedded with fine silts or clays. See our response to comment #5 in the final listing rule (78 FR 45074, July 26, 2013) for additional information on our definitions of the terms "substrate embeddedness," "siltation," and "sedimentation" and on the relationship of these terms to the diamond darter's life-history requirements.

Public Comments

We received comments addressing the proposed critical habitat designation from eight organizations and one individual. Four organizations, the West Virginia Chamber of Commerce (WVCC), the West Virginia Oil and Natural Gas Association (WVONGA), the West Virginia Coal Association (WVCA), and the West Virginia Forestry Association (WVFA), were critical of the proposed rule and provided substantive comments in that regard. Each of these four organizations submitted comments during each of the two comment periods. Four other organizations, The Nature Conservancy (TNC), West Virginia Rivers Coalition (WVRC), Center for Biological Diversity (CBD), and Kentucky Waterways Alliance (KYWA), and the one individual were strongly supportive of the proposed critical habitat designation. The KYWA confirmed that the Green River contains the PCEs required to support the diamond darter, including connected riffle-pool complex habitats that are unaffected by any impoundments with clean sand and gravel substrates and healthy and diverse benthic macroinvertebrate prey populations. The KYWA also confirmed the Green River has a number of protective use designations that provide protections consistent with the recovery of the diamond darter.

The CBD, on behalf of itself and 16 additional organizations, submitted comments in support of the proposed critical habitat designation, reiterated information presented in the proposed rule, and suggested that the designation of unoccupied critical habitat in Kentucky will greatly increase the diamond darter's potential for survival and recovery. In addition, approximately 4,840 individuals associated with CBD provided form letters supporting the proposed critical habitat that reiterated the comments provided by CBD. One individual, the WVRC, the CBD, and associated individuals responding by form letter, urged the Service to act quickly to finalize the critical habitat designation, with the WVRC suggesting that protection is needed now while there still may be a viable breeding population of diamond darters. Additional substantive comments from the eight organizations are detailed below.

(5) *Comment:* The KYWA provided additional supporting information on the current and historical biological diversity of the Green River. The organization noted that the diamond darter is one of the native fish species currently missing from the system, and that darters play an important role in aquatic systems as indicators of good water quality and diversity. The organization suggested that reintroducing the diamond darter into the river would create a more complete aquatic ecosystem, would help to sustain other populations of fish, such as muskellunge (*Esox masquinongy*) or bass (*Micropterus spp.*), and contribute to a healthy robust native ecosystem. The KYWA concluded that the organization strongly supports all efforts to fully restore and protect all native species to the Green River.

Our Response: We appreciate the additional information on historical biodiversity in the Green River, and we have incorporated this information into the final rule, as appropriate. We also concur with the assessment of potential benefits of restoring healthy intact aquatic ecosystems.

(6) *Comment:* The KYWA and TNC described numerous ongoing efforts that the organizations and their partners have conducted to protect and enhance the Green River and to educate the public on the river's biodiversity. These efforts included river cleanups, the addition of lands to Western Kentucky University's (WKU) Upper Green River Biological Reserve, and the establishment of a Watershed Watch program under which volunteers are trained to monitor the biological conditions in the river. The organization further expressed a willingness to work with the Service and appropriate State agencies on restoration of diamond darter populations in the Green River.

Our Response: The KYWA and TNC have acted proactively to protect and restore the Green River and its aquatic species. The Service appreciates these efforts and the offer to assist in diamond darter recovery. We recognize that partnerships are essential for the conservation of aquatic habitats and the diamond darter, and we look forward to continuing to work with these organizations on Green River restoration and diamond darter conservation.

(7) *Comment:* The WVCC, WVCA, WVFA, and WVONGA all commented that data are insufficient to quantitatively define specific water quality standards required by the diamond darter. These organizations noted that conductivity was described as a threat to the diamond darter in the proposed listing rule even though an appropriate conductivity range for the diamond darter has not yet been established and scientific studies have not conclusively shown that elevated conductivity causes harm to fish species. These organizations stated that, if the final rule suggests ideal water quality conditions for parameters such as conductivity, these parameters should be based on observations where the diamond darter population currently exists in the Elk River or on direct testing on the diamond darter. Finally, the organizations recommend that the use of the crystal darter (*Crystallaria asprella*) as a surrogate for the diamond darter to establish water quality parameters is not justified because the ranges of these two species do not overlap and the two species are genetically distinct.

Our Response: See our responses to comments #12 and #13 in the final listing rule (78 FR 45074, July 26, 2013) for a detailed response to the threat that conductivity poses to the diamond

darter, and our approach to describing appropriate water quality parameters for the diamond darter, including using data from surrogate species.

(8) *Comment:* The WVCC, WVCA, WVFA, and WVONGA all suggested that the DEA inappropriately fails to consider the potential economic effects on Kanawha County, and that our justification that the county "does not meet the definition of small government" is insufficient. They specifically mention a sentence on page ES–9 of the DEA.

Our Response: As described in Section 4.2.1 of the DEA, the Economic Analysis takes into account all economic impacts that occur within the study area, such as impacts to coal mining in Unit 1. The study area includes Kanawha County; therefore, the economic impacts to the County are analyzed in the DEA. The DEA sentence the commenter mentioned refers specifically to the DEA's analysis of economic impacts on small entities, including governmental entities. The DEA appendix (see page A–2) further clarifies the definition of small entities under the Small Business Regulatory Enforcement Flexibility Act (SBREFA; 5 U.S.C. 801 *et seq.*) as "small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000." We note that Kanawha County has a population of 192,179, which is more than the 50,000 population-level threshold. Therefore, Kanawha County, by definition, cannot be considered "small" under the SBREFA. However, Chapter 4 of the DEA, in particular Exhibit 4–1, presents the overall economic impacts in the Unit 1 Study Area, which includes all impacts within Kanawha and Clay Counties, West Virginia.

(9) *Comment:* The WVCC, WVONGA, and WVCA disagreed with the DEA's assertion that, if time delay impacts to the resource extraction industry were to occur, the impacts would be attributable to the listing of the diamond darter and co-occurring mussel species rather than to the designation of the diamond darter's proposed critical habitat. The organizations also stated that the DEA fails to quantify the likely impacts to the regulated community, particularly relative to the coal mining and oil and natural gas production and manufacturing industries.

Our Response: Page 4–2 of the DEA notes that approximately 66 consultations related to coal mining and natural gas production activities are anticipated to occur over the next 20 years (a rate of approximately 3 consultations annually), and that some of these consultations may result in time delays. In addition, section 2.3.2 presents the DEA's methodology for identifying incremental impacts, which relies partly upon the Service's *Incremental Effects Memorandum for the Economic Analysis for the Proposed Rule to Designate Critical Habitat for the Diamond Darter* (Incremental Memorandum) and which is provided as DEA Appendix D. The Incremental Memorandum explains that areas occupied by the diamond darter or other co-occurring listed species are unlikely to incur incremental impacts (those associated solely with a critical habitat designation) because "there is a close relationship between the health of the diamond darter and the health of its habitat." This means that the conservation measures needed to avoid adverse modification of critical habitat would typically already be included in any measures required to avoid jeopardizing the continued existence of the diamond darter. In other words, there would be no substantial time delays in evaluating a project that has the potential to affect critical habitat versus a project that has the potential to affect the diamond darter.

As described in section 3.2.1, because consultations related to coal mining and natural gas production would fall within occupied habitat, the DEA finds that these consultations and any related time delays would result from the listing of the diamond darter and the presence of co-occurring listed mussel species, regardless of the designation of diamond darter critical habitat. Based on the case law and guidance from the U.S. Office of Management and Budget (OMB) reviewed in Chapter 2 of the DEA, the DEA quantifies only those economic impacts that are specifically attributable solely to the designation of critical habitat, and provides a narrative description of other forecast impacts that may stem from diamond darter conservation efforts requested under the Act's jeopardy standard. Accordingly, the DEA qualitatively describes, but does not quantify, these potential impacts to coal mining and natural gas production activities.

(10) *Comment:* The WVONGA and the WVCC stated that oil and natural gas exploration and drilling have surged within the Study Area. Based on this anticipated increased activity, the organizations expressed concern that the DEA fails to consider future impacts of the proposed critical habitat designation to oil and natural gas exploration and drilling, including the adverse outcome of increased regulatory actions that will impact the construction of stream crossings. The organizations did not provide detailed information on trends within the oil and natural gas industry to support the comment.

Our Response: As discussed in section 3.2.1 of the DEA, there is considerable uncertainty about future demand levels for oil and natural gas activity within the study area. If reliable projections of the demand for oil and natural gas were available, we would incorporate this information into the economic analysis. When drafting the DEA, we contacted WVONGA to obtain more detailed or reliable projections of the demand for oil and gas in the Study Area. However, WVONGA did not respond to our requests for information. In addition, the comment letters provided on the DEA did not provide any detailed information that would allow us to estimate future trends in the demand for oil and gas within the Study Area. Therefore, absent such projections, we rely on historical permitting data to forecast future levels of economic activity related to oil and natural gas exploration and drilling within the Study Area.

(11) *Comment:* The WVCC, WVCA, WVONGA, and WVFA stated that the DEA does not appropriately consider all economic impacts on small business entities. The organizations disagreed with the Service's amended determination certifying 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." The organizations further stated that the amended determination should be reconsidered to adequately account for the complete economic impact on small businesses as required under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by SBREFA. The WVFA also expressed concern that small businesses do not have sufficient unfilled working hours to manage the consultation process that would be contracted to third party vendors.

Our Response: Section 7 of the Act is the regulatory mechanism requiring Federal agencies, in consultation with the Service, to insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of critical habitat. Therefore, as discussed in our proposed rule and notice of availability of the DEA, it is the Service's interpretation of the definition of a "directly regulated entity" that only

Federal action agencies are subject to a regulatory requirement (i.e., to avoid adverse modification) as the result of the critical habitat designation. Federal agencies are not considered small entities under the RFA as amended by SBREFA. Accordingly, the Service has determined that small businesses are not directly regulated by this designation of critical habitat. Therefore, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities, and thus no additional analysis is required.

However, we acknowledge that in some cases third-party proponents of the action subject to Federal permitting or funding may participate in a section 7 consultation and thus may be indirectly affected. While these entities are not directly regulated, the DEA provides information about the potential number of third parties participating in section 7 consultations on an annual basis and the associated per-consultation cost. This information is included to ensure a robust examination of the effects of the proposed diamond darter critical habitat. For example, the DEA estimates that 258 small entities may be affected over the next 20 years. This equates to an average of approximately 13 entities being affected per year. The large majority of these affected entities (190 or 82 percent) would be agriculture and timbering entities in Kentucky that would be receiving assistance through the Natural Resources Conservation Service (NRCS). We note that participation in NRCS assistance programs is voluntary. Potentially affected small timbering and agricultural entities could choose not to participate in these programs and thus not be affected by the critical habitat designation.

In addition, NRCS assistance programs are typically designed to restore ecological conditions and improve land management practices. Funded activities include assistance to landowners to install riparian buffers, improve water quality, and control nutrient and sediment inputs into streams. Most of these activities would provide ecological benefits to the diamond darter while also providing economic benefits to the small entity that is receiving Federal assistance. Finally, NRCS comments on the combined proposed listing and critical habitat rule (NRCS 2013) indicated a desire to develop programmatic measures to avoid and minimize any potential adverse effects to the diamond darter in Kentucky, similar to the approach that was recently completed in West Virginia. The development of programmatic measures would reduce regulatory uncertainty and the costs associated with consultation for both the Federal agencies and the 190 potentially affected small entities below the level currently estimated in the DEA.

The remaining 68 potentially affected small entities would be associated with resource extraction and other instream work. This equates to an average of fewer than four affected small entities per year. The DEA further estimates costs associated with each of these activity types. The DEA Exhibit A–1 estimates incremental costs of between $880 and $8,800 per entity; this cost is an impact of less than 0.1 percent to each entity's annual revenue. While we recognize that each of the four entities affected per year may consider the cost to be significant, the Service does not consider the total number of entities and the associated potential costs to be substantial or significant, respectively, under SBREFA. Based on our interpretation of the directly regulated entities under the RFA and the evaluation of potential impacts to third parties that may be affected by this designation, the Service concludes that the designation of diamond darter critical habitat as proposed will not have a significant economic impact on a substantial number of small entities.

(12) *Comment:* The CBD suggested that the Service should consider the economic benefits of protecting habitat for the diamond darter, including ecosystem services, the protection of clean water and the reduced cost of water treatment for drinking supplies, and the environmental justice benefits of protecting human health from mining. The CBD further stated that the Elk River is one of the most biodiverse rivers in West Virginia and the Service should also consider the economic benefits of preserving the State's natural heritage.

Our Response: Section 4.4 of the DEA discusses the economic benefits of critical habitat designation. Quantifying and monetizing the conservation and ancillary benefits associated with the proposed critical habitat designation requires information on the incremental change in the probability of diamond darter conservation that is expected to result solely from the critical habitat designation. As described in DEA Chapters 3 and 4, given the baseline protections provided to the species (including the proposed listing of the diamond darter), and the characteristics of the specific projects anticipated to occur over the 20-year timeframe of the analysis, the designation of critical habitat is unlikely to result in future project modifications. Based on the case law and guidance from OMB reviewed in Chapter 2, the DEA quantifies only those economic effects (both benefits and costs) that are specifically attributable solely to the designation of critical habitat. In addition, the CBD did not provide information that would assist the Service in quantifying such benefits. As a result, economic or environmental justice benefits are not expected to occur as a result of the critical habitat designation and are, therefore, not quantified in the DEA.

Summary of Changes From the Proposed Rule

This final rule incorporates appropriate changes to our proposed critical habitat based on the comments we received, as discussed above, and newly available scientific data. Substantive changes include new or additional information on: (1) The potential space required to provide for larval drift; (2) current conservation efforts conducted by private organizations in the Green River; and (3) recent survey efforts on the distribution of the diamond darter in the Elk River. We also clarify (1) that we excluded areas from designation as unoccupied critical habitat if extant museum specimens were not available that could be independently verified as the diamond darter; (2) the text of PCE 2 and associated discussions to indicate that the diamond darter requires stream substrates that are not embedded with and are relatively free from silts and clays, while being dependent on a natural abundance of sand in the substrate; and (3) the use of the terms "siltation" and "sedimentation." Although the discussion of our PCEs is somewhat different from that in our proposed rule, the analysis and our conclusions are a logical outgrowth of the proposed rule commenting process, and none of the information changed our determination of critical habitat for the diamond darter.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (PCEs such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. The PCEs are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available data at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

In addition, we recognize that climate change may cause changes in the arrangement of occupied habitat and stream reaches. The synergistic interaction between climate change and habitat fragmentation results in a greater threat to biodiversity than climate change alone (Hannah and Lovejoy 2003, p. 4). Current climate change predictions for the central Appalachians indicate that aquatic habitats will be subject to increased temperatures and drought stress, especially during the summer and early fall. There will likely be an increase in the variability of stream flow, and the frequency of extreme events, such as drought, severe storms, and flooding is likely to increase statewide (Buzby and Perry 2000, p. 1774; Byers and Norris 2011, p. 20). Species with limited ranges and that have either natural or anthropomorphic barriers to movement, such as the dams that fragment and isolate diamond

darter habitat, have been found to be especially vulnerable to the effects of climate change (Byers and Norris 2011, p. 18).

Precise estimates of the location and magnitude of impacts from global climate change and increasing temperatures cannot be made from the currently available information. Nor are we currently aware of any climate change information specific to the habitat of the diamond darter that would indicate what areas may become important to the species in the future. However, among the most powerful strategies for the long-term conservation of biodiversity is establishment of networks of intact habitats and conservation areas that represent a full range of ecosystems and include multiple, robust examples of each type. The principles of resiliency and redundancy are at the core of many conservation planning efforts, and are increasingly important as the stresses of climate change erode existing habitats (Byers and Norris 2011, p. 24). Therefore, we have attempted to incorporate these principles into our determination of critical habitat by delineating two units that are representative of the range of habitats currently and previously occupied by the species.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the diamond darter from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to list the diamond darter as endangered and designate critical habitat published in the **Federal Register** on July 26, 2012 (77 FR 43906), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on July 26, 2013 (78 FR 45074). Because diamond darters are rare, very little information is available with which to quantitatively define the optimal conditions or range of suitable conditions for a specific biological or physical feature needed by the species. When species-specific information is limited, we rely on information from the crystal darter and other similar darter species. Because the crystal darter is in the same genus, shares many similar life-history traits, and was previously considered the same species as the diamond darter, information on this species can reasonably be used to suggest factors or conditions that may also be important to the diamond darter. All of the available information is sufficient for us to qualitatively discuss the PBFs needed to support the species. Based on this review, we have determined that the diamond darter requires the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

The diamond darter inhabits moderate to large, warmwater streams with clean sand and gravel substrates (Simon and Wallus 2006, p. 52). Moderate- to large-sized warmwater streams are defined as fourth- to eighth-order streams with a drainage area exceeding 518 square kilometers (km^2) (200 square miles (mi^2)), and water temperatures exceeding 20 °C (68 °F) at some point during the year (Winger 1981, p. 40; Oliverio and Anderson 2008, p. 12). In the Elk River, adult diamond darters have been collected in transition areas between riffles and pools where substrates were greater than 40 percent sand and gravel (Welsh *et al.* 2004, p. 6; Osier 2005, p. 11; Welsh and Wood 2008, pp. 62–68). These habitat characteristics are similar to those described for the crystal darter (Welsh *et al.* 2008, p. 1).

Many studies have found that the crystal darter does not occur in areas with large amounts of silt, clay, detritus, or submerged vegetation (George *et al.* 1996, p. 71; Shepard *et al.* 1999 in Osier 2005, p. 11; NatureServe 2008, p. 1). Substrates with high levels of silt are unsuitable for the diamond darter. Siltation has been shown to negatively impact fish growth, survival, and reproduction (Berkman and Rabeni 1987, p. 285). Siltation is the pollution of water by fine particulate terrestrial material, with a particle size dominated by silt or clay. It refers both to the increased concentration of suspended sediments and to the increased accumulation (temporary or permanent) of fine sediments on stream bottoms. Both the diamond darter and the crystal darter are noted to be particularly susceptible to the effects of siltation and may have been extirpated from historical habitats due to excessive siltation (Grandmaison *et al.* 2003, pp. 17–18).

Siltation can result from increased sedimentation and erosion along streambanks and roads and deposition caused by land-based disturbances (Rosgen 1996, pp. 1–3). Additionally, coal mining, oil and gas development, timber harvesting, and all-terrain vehicle use have been identified as land-based disturbances that are sources of increased erosion and siltation within the Elk River watershed (U.S. Environmental Protection Agency 2001b, pp. 1–1, 3–4, 6; WVDEP 2008b, p. 1). Streambank erosion and the resulting sedimentation and siltation can also be a source of increased channel instability (Rosgen 1996, pp. 1–3). Geomorphically stable streams transport sediment while maintaining their horizontal and vertical dimensions (width/depth ratio and cross-sectional area), pattern (sinuosity), longitudinal profile (riffles, runs, and pools), and substrate composition, whereas unstable streams cannot maintain these features (Rosgen 1996, pp. 1–3 to 1–6). Thus, geomorphically stable streams maintain the riffles, pools, and silt-free substrates necessary to provide typical habitats for the diamond darter. Based on this information, geomorphically stable streams with clean sand and gravel substrates and low levels of silt are a critical component of diamond darter habitat.

Fragmentation and destruction of habitat has reduced the range of the diamond darter to only one stream and has isolated the last remaining population, reducing the currently available space for rearing and reproduction. Small, isolated populations may have reduced adaptive capability and an increased likelihood of extinction (Gilpin and Soulé 1986, pp. 32–34; Noss and Cooperrider 1994, p. 61). Continuity of water flow and connectivity between remaining suitable habitats is essential in preventing further fragmentation of the species' habitat and population. Free movement of water within the stream allows darters to move between available habitats. This is necessary to provide sufficient space for the population to grow and to promote genetic flow

throughout the population. Continuity of habitat helps to maintain space for spawning, foraging, and resting sites, and also permits improvement in water quality and water quantity by allowing unobstructed water flow throughout the connected habitats. Thus, free movement of water that provides connectivity between habitats is necessary to support diamond darter populations.

Little information is available on the amount of space needed by either the diamond darter or the crystal darter for population growth and normal behavior. Many individuals of other darter species that use similar habitat types have been found to remain in one habitat area during short-term mark-and-recapture studies. However, upstream and downstream movements of other darters between riffles and between riffles and pools have been documented. Within-year movements typically ranged from 36 to 420 meters (m) (118.1 to 1,378.0 feet (ft)), and movements of up to 4.8 km (3.0 mi) have been documented (May 1969, pp. 86–87, 91; Freeman 1995, p. 363; Roberts and Angermeier 2007, pp. 422, 424–427).

In addition, a number of researchers have suggested that *Crystallaria* move upstream to reproduce, and that free-floating young-of-the-year disperse considerable distances downstream during spring high water where they eventually find suitable habitat to grow and mature (Stewart *et al.* 2005, p. 472; Hrabik 2012, p. 1). This suggests that *Crystallaria* may make long-distance movements in large rivers. This type of migratory behavior has been documented in bluebreast darters (*Etheostoma camurum*) (Trautman 1981, pp. 673–675). This species inhabits moderate to large-sized streams with low turbidity and is typically found in riffles, similar to the diamond darter. Trautman (1981, pp. 673–675) found that bluebreast darters were well-distributed throughout a 51–km (32–mi) reach of river during the breeding season, but that there was a reduction in numbers in the upper half of this reach starting in September and continuing through late winter to early spring. There was a corresponding increase in numbers in the lower half of the reach during this time. Individual darters captured in the spring were documented to have moved 152 m (500 ft) in a single day. In September and October, Trautman captured bluebreast darters in deep, low-velocity pools, which are not typical habitats for the species. He concluded that bluebreast and other darter species migrated upstream in spring and downstream in the fall (Trautman 1981, pp. 673–675).

After hatching, diamond darter larvae are pelagic and drift within the water column (Osier 2005, p. 12; Simon and Wallus 2006, p. 56; NatureServe 2008, p. 1). The larva may drift downstream until they reach slower water conditions such as pools, backwaters, or eddies (Lindquist and Page 1984, p. 27). It is not known how long diamond darters or crystal darters remain in this pelagic phase. The only known record of a young diamond darter captured in the wild was from benthic trawl surveys conducted in the Elk River somewhere near the confluence with the Kanawha River. We have been unable to determine the exact location of this capture, so we cannot determine how far downstream from known adult darter capture locations this young was found (Cincotta 2009a, p. 1). For more information on diamond darter larva drift, please see the Summary of Biological Status and Threats section of the final listing rule (78 FR 45074, July 26, 2013).

Based on this information, free movement between habitat types within a significant length of stream may be important to provide sufficient space to support genetic mixing and normal behavior of the diamond darter, including potential upstream movements during the breeding period and downstream larval drift.

Based on the biological information and needs discussed above, we identify connected riffle-pool complexes in moderate- to large-sized (fourth- to eighth-order), warmwater streams that are geomorphically stable with moderate current, clean sand and gravel substrates, and low levels of siltation to be physical or biological features essential to the conservation of the diamond darter.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Feeding habits of the diamond darter in the wild are not known. However, diamond darters kept in captivity were fed and survived on live blackworms, daphnia, and dragonfly larvae, frozen bloodworms, and adult brine shrimp (Ruble *et al.* 2010, p. 4). When in captivity, diamond darters were also observed resting on the bottom of the tank and taking food from slightly above their position, in front of them, or off the bottom (Welsh 2009c, p. 1). Diamond darters may also use an ambush foraging tactic by burying in the substrate and darting out at prey (Robinson 1992 and Hatch 1997 in Osier 2005, pp. 12–13; NatureServe 2008, p. 1; Ruble 2011c, p. 1). Researchers, therefore, expect that, similar to the crystal darter, adult diamond darters are benthic invertivores (NatureServe 2008, p. 8). Adult crystal darters eat midge and caddisfly larvae, and water mites in lesser quantities (Osier 2005, p. 13).

Similarly, juvenile and young crystal darters feed on immature stages of aquatic insects such as mayflies, craneflies, blackflies, caddisflies, and midges (Simon and Wallus 2006, pp. 56–57). Juvenile diamond darters hatched in captivity had teeth and a large gape width, which suggests that the larvae may feed on other smaller fish larvae (Ruble *et al.* 2010, p. 15). Researchers were unable to confirm this hypothesis due to poor survivorship of the diamond darter larvae and lack of available smaller fish larvae to provide as a potential food source (Ruble *et al.* 2010, pp. 12–14). Juveniles may also eat zooplankton prey, which is more typical for pelagic larval percids (Rakes 2011, p. 1). This information suggests that loose sand and gravel substrates suitable for ambush feeding behavior and healthy populations of benthic invertebrates and fish larvae for prey items are required to support the feeding requirements of the diamond darter.

Like most other darters, the diamond darter depends on clean water and perennial stream flows to successfully complete its life cycle (Page 1983, pp. 160–170). Sufficient water quality and quantity is required to support normal reproduction, growth, and survival. Because so few diamond darters have been captured, available data are insufficient to quantitatively define the standards for water quantity or quality that are required to support the species. However, some data available from areas that are known to support the diamond darter or the closely related crystal darter provide examples of suitable conditions.

Water quantity, including depth and current velocity, are known to be important habitat characteristics that determine whether an area is suitable to support a specific species of fish (Osier 2005, p. 3). Sites where *Crystallaria* have been captured are consistently described as having moderate to strong velocities (Grandmaison *et al.* 2003, p. 4; Osier 2005, p. 15). Moderate to strong velocities contribute to the clean-swept substrates and lack of silt commonly reported in documented crystal darter habitat (Osier 2005, p. 11). In the Elk River, the diamond darter has been collected from transition areas between riffles and pools at depths from 50 to 150 centimeters (cm) (20 to 59 inches (in)) and in moderate to strong velocities that are typically greater than 20 cm/second (sec) (8 in/sec) (Osier 2005, p. 31). Similarly, the crystal darter has

been described as generally inhabiting waters deeper than 60 cm (24 in) with strong currents typically greater than 32 cm/sec (13 in/sec) (Grandmaison *et al.* 2003, p. 4). Crystal darters were collected in Arkansas in water from 114 to 148 cm (45 to 58 in) deep with current velocities between 46 and 90 cm/sec (18 and 35 in/sec) (George *et al.* 1996 in Grandmaison *et al.* 2003, p. 4). Many of the measurements were taken at base or low flows when it is easiest to conduct fish surveys. Current velocity, water depth, and stream discharge are interrelated and variable, dependent on seasonal and daily patterns of rainfall (Bain and Stevenson 1999, p. 77; Grandmaison *et al.* 2003, p. 4). Therefore, velocities and depths at suitable habitat sites may change over time, or diamond darters may also move to other locations within a stream as seasonal and daily velocity and depth conditions change.

Water quality is also important to the persistence of the diamond darter. Specific water quality requirements (such as temperature, dissolved oxygen, pH, and conductivity) for the species have not been determined, but existing data provide some examples of conditions where *Crystallaria* were present. It is not known whether existing water quality conditions at capture sites are adequate to protect all life stages of *Crystallaria* species. Diamond darters were successfully maintained in captivity when water temperatures did not go below 2 °C (35.6 °F) in the winter or above 25 °C (77 °F) in the summer (Ruble *et al.* 2010, p. 4). In Arkansas, crystal darter capture areas had dissolved oxygen levels that ranged from 6.81 to 11.0 parts per million; pH levels from 5.7 to 6.6; specific conductivities from 175 to 250 µS/cm, and water temperatures from 14.5 to 26.8 °C (58 to 80 °F) (George *et al.* 1996, p. 71). In general, optimal water quality conditions for warmwater fishes are characterized as having moderate stream temperatures, high dissolved oxygen concentrations, and near-neutral pH levels. They are also characterized as lacking harmful levels of conductivity or pollutants including inorganic contaminants like iron, manganese, selenium, and cadmium; and organic contaminants such as human and animal waste products, pesticides and herbicides, fertilizers, and petroleum distillates (Winger 1981, pp. 36–38; Alabama Department of Environmental Management 1996, pp. 13–15; Maum and Moulton undated, pp. 1–2). Good water quality that is not degraded by inorganic or organic pollutants, low dissolved oxygen, or excessive conductivity is an important habitat component for the diamond darter.

Impoundment was one of the most direct and dramatic historical causes of diamond darter habitat loss. Impoundment of rivers for navigation may have been the final factor resulting in extirpation of the diamond darter from many of its historical habitats. Impoundment alters the quantity and flow of water in rivers, reduces or eliminates riffle habitats, reduces current velocities, and increases the amount of fine particles in the substrate (Rinne *et al.* 2005, pp. 3–5, 432–433). Diamond darters have been extirpated from many areas as a result of these effects (Grandmaison *et al.* 2003, p. 18; Trautman 1981, p. 25). Excessive water withdrawals can also reduce current velocities, reduce water depth, increase temperatures, concentrate pollution levels, and result in deposition of fine particles in the substrate, making the areas less suitable to support the diamond darter (Pennsylvania State University 2010, p. 9; Freeman and Marcinek 2006, p. 445). An ample and unimpeded supply of flowing water that closely resembles natural peaks and lows typically maintains riffle habitats, transports nutrients and food items, moderates water temperatures and dissolved oxygen levels, removes fine sediments that could damage spawning or foraging habitats, and dilutes non-point-source pollutants. Therefore, an unimpeded flowing water supply is essential to the diamond darter.

Based on the biological information and needs discussed above, we identify perennial streams with moderate velocities, seasonally moderated temperatures, good water quality, loose sand and gravel substrates, and healthy populations of benthic invertebrates and fish larvae for prey items to be physical or biological features essential to the conservation for the diamond darter. We also identify an ample and unimpeded supply of flowing water that closely resembles natural peaks and lows to be essential to the conservation for the diamond darter.

Cover or Shelter

Adult diamond darters and crystal darters typically have been captured in riffle-pool transition areas with predominately (greater than 20 percent each) sand and gravel substrates (Osier 2005, pp. 51–52). Diamond darters will bury in these types of substrates for cover and shelter. Individuals observed in captivity were frequently seen either completely buried in the substrate during the day or partially buried with only the head (eyes and top of the snout) out of the substrate. However, individuals were often on top of the substrate at night time (Welsh 2009c, p. 1). Burying occurred by the individual rising slightly up above the substrate and then plunging headfirst into the sand and using its tail motion to burrow (Welsh 2009c, p. 1). This type of burying behavior has also been reported in the crystal darter (Osier 2005, p. 11; NatureServe 2008, p. 1).

Substrates that are heavily embedded with silts and clays may impede this behavior. Embeddedness is the degree that cobble or gravel substrates are impacted by being surrounded or covered by fine silt and clay materials (Shipman 2000, p. 12). Embedded substrates are not easily dislodged, and would therefore be difficult for the diamond darter to burrow into for cover. Heavily embedded substrates can be the result of human activities increasing the amount of sedimentation and siltation occurring in the stream (Shipman 2000, p. 12). While some definitions of embeddedness include sands as "fines" that increase embeddedness, naturally sandy streams are not considered embedded. However, a sand-predominated stream that is the result of anthropogenic activities that have buried the natural course substrates is considered embedded (Barbour *et al.* 1999, pp. 5–13; Shipman 2000, p. 12). The diamond darter requires substrates unembedded with silts and clays with a naturally high percentage of sands intermixed with loose gravel to fulfill these life-history requirements.

Variability in the substrate and available habitat is also an important sheltering requirement for the diamond darter. Darters may shift to different habitat types during different life phases, or due to changing environmental conditions such as high water or warm temperatures (Osier 2005, p. 7). Deeper or sheltered habitats may provide refuge during warm weather, and it has been suggested that *Crystallaria* species may use deeper pools during the day (Osier 2005, p. 10). Substrate variety, such as the presence of boulders or woody materials, may provide velocity shelters for young darters during high flows (Osier 2005, p. 4). Larval and young diamond darters may also use pools (Rakes 2013, p. 1). Darter larva may be poorly developed skeletally and unable to hold position or swim upstream where stronger currents exist (Lindquist and Page 1984, p. 27). The slower velocity habitats found in pools may provide darter larva with refuge from strong currents and allow them to find cover and forage (Lindquist and Page 1984, p. 27).

Based on the biological information and needs discussed above, we identify riffle-pool transition areas with relatively silt-free sand and gravel substrates, as well as access to a variety of other substrate and habitat types, including pool habitats, to be physical or biological features essential to the conservation for the diamond darter.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Very little information is available on reproductive biology and early life history of the diamond darter (Welsh *et al.* 2008, p. 1; Ruble and Welsh 2010, p. 1), and to date, only one young-of-the-year of this species has been found in the wild. We have not been able to obtain specific information on this collection, which probably occurred in 2007 in the Elk River near the confluence with the Kanawha River, West Virginia (Cincotta 2009a, p. 1). However, research on reproductive biology of the species is being conducted by Conservation Fisheries Inc. (CFI) in partnership with the U.S. Geological Service (USGS) West Virginia Cooperative Fish and Wildlife Research Unit at West Virginia University. Five individual diamond darters, consisting of at least three females, one male, and one of undetermined sex, have been held in captivity at the CFI facility and were maintained in simulated stream conditions. Water temperature and daylight were also adjusted throughout the seasons to simulate natural fluctuations that would be experienced in the wild (Ruble and Welsh 2010, p. 2).

Spawning began when water temperatures were consistently above 15 °C and ceased when temperatures reached 22 °C (Ruble 2011b, p. 2). Females showed signs of being gravid from late March to May (Ruble et al. 2010, pp. 11–12). Both eggs and hatched larvae were observed in April (Ruble *et al.* 2010, pp. 11–12; Ruble 2011, p. 1). Peak breeding time is likely mid-April when water temperatures range from 15 to 20 °C (59 to 68 °F) (Ruble *et al.* 2010, p. 12). Although incubation time is difficult to determine because most eggs that survived already showed considerable development, it is estimated that, at 15 °C (59 °F), hatch time is 7 to 9 days (Ruble *et al.* 2010, p. 11). Although eggs were produced every year, no young have survived and matured (Ruble *et al.* 2010, pp. 11–12; Ruble 2011b, p. 1).

Because no young have been successfully maintained in captivity and no studies of wild populations are available, we are not able to quantify the range of water quality conditions needed for successful reproduction. Factors that can impair egg viability include high temperatures, low oxygen levels, siltation, and other water quality conditions (Ruble 2011b, p. 2). Inadequate water flow through the substrate or low oxygen levels within the substrate can lead to poor egg development or poor larval condition (Ruble 2011b, p. 2).

In addition to information from the CFI diamond darter reproduction study, there is some information available on crystal darter reproduction (Welsh *et al.* 2008, p. 1). In Arkansas, the reproductive season was from late January through mid-April, which roughly correlates with early April in the Ohio River Basin (George *et al.* 1996, p. 75; Simon and Wallus 2006, p. 52). Evidence suggests that females are capable of multiple spawning events and producing multiple clutches of eggs in one season (George *et al.* 1996, p. 75). Spawning occurs in the spring when the crystal darters lay their eggs in side channel riffle habitats over sand and gravel substrates in moderate current. Adult darters do not guard their eggs (Simon and Wallus 2006, p. 56). Embryos develop in the clean interstitial spaces of the coarse substrate (Simon and Wallus 2006, p. 56). After hatching, the larvae are pelagic and drift within the water column (Osier 2005, p. 12; Simon and Wallus 2006, p. 56; NatureServe 2008, p. 1).

Based on the biological information and needs discussed above, we identify streams with naturally fluctuating and seasonally moderated water temperatures, high dissolved oxygen levels, and clean, relatively silt-free sand and gravel substrates to be physical or biological features essential to the conservation for the diamond darter.

Habitats That Are Protected From Disturbance or Are Representative of the Historical, Geographical, and Ecological Distributions of a Species

As described above, clean, stable substrates, good water quality, and healthy benthic invertebrate populations are habitat features essential to the diamond darter. Direct disturbance, alteration, or fill of instream habitat can degrade these essential features; kill or injure adult fish, young, or eggs; destabilize the substrates leading to increased sedimentation and erosion; and reduce the amount of available food and habitat to support fish populations. These impacts make the area less suitable for fish such as the diamond darter (Reid and Anderson 1999, pp. 235–245; Levesque and Dube 2007, pp. 396–402; Welsh 2009d, p. 1; Penkal and Phillips 2011, pp. 6–7). Direct disturbance and instream construction can also increase substrate compaction and silt deposition within the direct impact area and downstream. This reduces water flow through the substrate, and increases substrate embeddedness (Reid and Anderson 1999, p. 243; Levesque and Dube 2007, pp. 396–397; Penkal and Phillips 2011, pp. 6–7). This can impede the normal burrowing behavior of the diamond darter, which is required for successful foraging and shelter, degrade spawning habitat, result in the production of fewer and smaller eggs, and impair egg and larvae development (Reid and Anderson 1999, pp. 244–245; Levesque and Dube 2007, pp. 401–402).

Intact riparian vegetation is also an important component of aquatic habitats that support the diamond darter. Darters are particularly susceptible to impacts associated with disturbance to riparian vegetation such as alteration of instream habitat characteristics and increased sedimentation and siltation (Jones *et al.* 1999, pp. 1461–1462; Pusey and Arthington 2003, p. 1). Removal of riparian vegetation can lead to decreases in fish species, such as the diamond darter, that do not guard eggs or that are dependent on swift, shallow water that flows over relatively sediment-free substrates (Jones *et al.* 1999, p. 1462). Thus, avoiding disturbances to streambeds and banks is important to maintaining stable substrates, food availability, successful reproduction, and habitat suitability for the diamond darter.

All current and historical capture locations of the diamond darter are from moderate- to large-sized (fourth- to eighth-order), warmwater streams within the Ohio River Watershed (Welsh 2008, p. 3; Southeast Aquatics Resources Partnership 2011, pp. 1–19). The species was historically distributed in at least four major drainages throughout the watershed and is now likely extirpated from Ohio, Kentucky, and Tennessee. The current range is restricted to a small segment of one river within West Virginia. Therefore, the current range of the species is not representative of the historical or geographical distribution of the species and is not sufficient for the conservation of the diamond darter. Given that the current distribution is restricted to approximately 45 km (28 mi) within one river, the species is vulnerable to the threats of reduced fitness through genetic inbreeding, and extinction from a combination of cumulative effects or a single catastrophic event such as a toxic chemical spill (Gilpin and Soule

1986, pp. 23–33; Noss and Cooperrider 1994, p. 61). In addition, because the current range is isolated from other suitable habitats due to the presence of dams and impoundments, the species has limited ability to naturally expand its current range and recolonize previously occupied habitats (Warren *et al.* 2000 in Grandmaison *et al.* 2003, p. 18). A species' distribution that includes populations in more than one moderate to large river within the Ohio River watershed would provide some protection against these threats and would be more representative of the historical geographic distribution of the species.

Based on the biological information and needs discussed above, we identify stable, undisturbed streambeds and banks, and ability for populations to be distributed in multiple moderate- to large-sized (fourth- to eighth-order) streams throughout the Ohio River watershed to be physical or biological features essential to the conservation for the diamond darter.

Primary Constituent Elements for the Diamond Darter

Under the Act and its implementing regulations, we are required to identify the physical or biological features (PBFs) essential to the conservation of the diamond darter in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). The PCEs are those specific elements of the PBFs that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the PBFs and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs specific to the diamond darter are:

(1) PCE 1—A series of connected riffle-pool complexes with moderate velocities in moderate- to large-sized (fourth- to eighth-order), geomorphically stable streams within the Ohio River watershed.

(2) PCE 2—Stable, undisturbed sand and gravel stream substrates, that are relatively free of and not embedded with silts and clays.

(3) PCE 3—An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) that is relatively unimpeded by impoundment or diversions such that there is minimal departure from a natural hydrograph.

(4) PCE 4—Adequate water quality characterized by seasonally moderated temperatures, high dissolved oxygen levels, and moderate pH, and low levels of pollutants and siltation. Adequate water quality is defined as the quality necessary for normal behavior, growth, and viability of all life stages of the diamond darter.

(5) PCE 5—A prey base of other fish larvae and benthic invertebrates including midge, caddisfly, and mayfly larvae.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species, and which may require special management considerations or protection. The area we are designating as currently occupied critical habitat for the diamond darter is not under special management or protection provided by a legally operative management plan or agreement specific to conservation of the diamond darter, and has not been designated as critical habitat for other species under the Act. This unit will require some level of management to address the current and future threats to the PBFs of the diamond darter. Various activities in or adjacent to the critical habitat unit described in this rule may affect one or more of the PCEs and may require special management considerations or protection. Some of these activities include, but are not limited to, resource extraction (coal mining, timber harvests, and natural gas and oil development activities), construction and maintenance projects, stream bottom disturbance from sewer, gas, and water lines, removal of riparian vegetation, and other sources of non-point-source pollution.

Management activities that could ameliorate these threats include, but are not limited to: use of best management practices designed to reduce sedimentation, erosion, and streambank destruction; development of alternatives that avoid and minimize streambed disturbances; implementation of regulations that control the amount and quality of point-source discharges; and reduction of other watershed and floodplain disturbances that release sediments or other pollutants. Special management consideration or protection may be required to eliminate, or to reduce to negligible levels, the threats affecting the physical or biological features of each unit. Additional discussion of threats facing individual units is provided in the individual unit descriptions below.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2)(A) of the Act, we use the best scientific data available to designate critical habitat. We reviewed the available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. As discussed in more detail below, we are designating as critical habitat all habitat that is occupied by the species at the time of listing in 2013; that is, the lower Elk River. This river reach constitutes the entire current range of the species. We are also designating one specific area outside the geographical area occupied by the species at the time of listing, but that was historically occupied, because we have determined this area is essential for the conservation of the species.

For our evaluation of critical habitat, we reviewed available literature, reports, and field notes prepared by biologists, as well as historical and current survey results. We also spoke to fisheries experts and conservation professionals that are familiar with darters or the current status of aquatic systems within the current and historical range of the diamond darter.

To identify currently occupied habitats, we delineated known capture sites and reviewed habitat assessments and mapping efforts that have been conducted on the Elk River. Known occurrences of the diamond darter are extremely localized, and the species can be difficult to locate. Because it is reasonably likely that this rare and cryptic species is present in suitable habitats outside the immediate locations of the known captures, we considered the entire reach between the uppermost and lowermost known collection locations as occupied habitat. We also included some areas of the mainstem Elk River that have not been specifically surveyed for diamond darters but have been determined to have suitable habitat for the species based on species-specific habitat assessments (Osier 2005, pp. ii–50). These areas are contiguous with known capture sites, have similar habitat characteristics, have no barriers to dispersal, and are within general darter dispersal capabilities including upstream spawning movements and downstream larval drift. In addition, river habitats are highly dependent on upstream and downstream habitat

conditions for their maintenance, so these contiguous areas upstream and downstream are critical to maintaining habitat conditions of known capture sites.

Because we have not been able to obtain a precise location of the young diamond darter that was captured in the Elk River somewhere near the confluence with the Kanawha River, this capture was not included in the analysis. We cannot be sure whether the capture location of this young diamond darter is downstream of or within the critical habitat designation for this unit.

Areas of the Elk River downstream of the unit near the confluence with the Kanawha River that do not currently provide the PCEs required to support the species, and no longer have suitable habitat characteristics, were not included. Specifically, the reach of the Elk River downstream of the unit to the confluence with the Kanawha River is affected by impoundment from the Winfield Lock and Dam on the Kanawha River. It is also routinely dredged for commercial navigation by the ACOE.

The portion of the Elk River upstream of the designated unit may provide suitable habitat for the diamond darter, but we have no records of diamond darters being captured in this reach. The upper Elk River reach does contain the favorable general habitat characteristics of riffle-pool complexes with sand and gravel substrates, and there are no barriers to upstream fish movement (Service 2008, entire). However, only limited survey efforts and no diamond darter species-specific habitat assessments have been conducted that would allow us to further refine our assessment of whether this area contains any of the PCEs necessary to support the species. Surveys at four shoals in this upstream reach were conducted in 2012, and no diamond darters were located (Welsh *et al.* 2012, p. 10). Additional survey efforts may further define whether the upstream area is occupied by the diamond darter or which, if any, PCEs are present that may require special management considerations. As a result, we are not proposing to designate additional critical habitat upstream of King Shoals.

We have not included Elk River tributaries as part of the designation because we have no records of the diamond darter occurring in those locations, and there have been no species-specific habitat assessments in the tributaries documenting that these areas are suitable to support the species.

We then considered whether occupied habitat was adequate for the conservation of the species. As just described, currently occupied habitats of the diamond darter are highly localized and isolated, and are restricted to one reach of the Elk River. The range has been severely curtailed, and population size is small. Small isolated aquatic populations are subject to chance catastrophic events and to changes in human activities and land use practices that may result in their elimination. Threats to the diamond darter are imminent and are present throughout the entire range of the species. As described in the final listing rule (78 FR 45074, July 26, 2013), these threats are compounded by its limited distribution and isolation, making the species extremely vulnerable to extinction; therefore, it is unlikely that currently occupied habitat is adequate for its conservation (Soule 1980, pp. 157–158; Noss and Cooperrider 1994, p. 61; Hunter 2002, pp. 97–101; Allendorf and Luikart 2007, pp. 117–146). Larger, more dispersed populations can reduce the threat of extinction due to habitat fragmentation and isolation (Harris 1984, pp. 93–104; Noss and Cooperrider 1994, pp. 264–297; Warren *et al.* 2000 in Grandmaison *et al.* 2003, p. 18). For these reasons, we find that conservation of the diamond darter requires expanding its range into suitable, currently unoccupied portions of its historical habitat. The inclusion of essential, unoccupied areas will provide habitat for population reintroduction and will improve the species' status through added redundancy, resiliency, and representation.

To identify areas of unoccupied habitat that should be designated as critical habitat, we first selected rivers that had historical records confirmed to be of the diamond darter. By examining available museum specimens, we were able to independently verify the accuracy of the historical record. For rivers that had more than one historical capture, approximate capture locations were mapped so that the minimum previously occupied extent could be established. We then identified areas of contiguous habitat that still contained characteristics sufficient to support the life history of the species. Areas that no longer provided suitable habitat, were impounded, or did not contain a series of connected riffle-pool complexes were eliminated from consideration. For river reaches that passed this initial screen, we then applied the following criteria to identify the unoccupied, potential critical habitat: (1) The reach supports fish species with habitat preferences similar to the diamond darter such as the shoal chub (*Macrhybopsis hyostoma*) and the streamline chub; (2) the reach supports diverse populations of fish and mussels including other sensitive, rare, or threatened and endangered species; and (3) the reach has special management or protections in place such as being a designated wild river or exceptional use waters under State law. Only one reach that we identified, in the Green River of Kentucky, met all three criteria. Applying these criteria, we confirmed that the identified area had high-quality habitats sufficient to support the species and could be managed for the conservation of the species. No other areas were identified that met all three criteria.

Next, we delineated the upstream and downstream boundaries of the unit on the Green River: The Green River immediately downstream of Green River Lake (River Mile 308.8 to 294.8) is excluded from the designated critical habitat unit due to artificially variable flow, temperature, and dissolved oxygen conditions resulting from periodic discharges from Green River Dam. Fish community data collected between Greensburg and Green River Dam indicate a general trend of increasing species richness and abundance from Tebb's Bend (approximately 2.7 km (1.7 mi) below the dam) downstream to Roachville Ford (approximately 22.7 km (14.1 mi) below the dam). Also, some relatively intolerant benthic fish species present at Roachville Ford and other sites downstream within The Nature Conservancy's designated Green River Bioreserve are absent at Tebb's Bend, including mountain madtom (*Noturus eleutherus*), spotted darter (*Etheostoma maculatum*), and Tippecanoe darter (*Etheostoma tippecanoe*) (Thomas *et al.* 2004, p. 10). In contrast with Roachville Ford and other downstream sites, cobble and gravel substrates at Tebb's Bend are coated with a black substance characteristic of manganese and iron, which precipitates out and is deposited on the streambed following hypolimnetic discharge from reservoirs (Thomas 2012, p. 1). Because fish community structure and habitat conditions at Roachville Ford are more similar to other downstream locations that are not affected by impoundment, this location (River Mile 294.8) represents the upstream limit of the designated critical habitat section, which continues downstream to Cave Island (River Mile 200.3) within Mammoth Cave National Park (NP).

Downstream of Cave Island, the Green River becomes affected by impoundment from the ACOE Lock and Dam #6. The lock and dam was constructed in 1906 and was disabled in 1950. Although the lock has been disabled and is becoming unstable, the

dam still partially impedes water flow, resulting in a system with slower, warmer water and a loss of riffle and shoal habitat types (Grubbs and Taylor 2004, p. 26; Olson 2006, pp. 295–297). The delineation between the portions of the river affected by Lock and Dam #6 and those that retain free-flowing characteristics occurs distinctly at Cave Island (Grubbs and Taylor 2004, pp. 19–26). There is a marked decrease in benthic macroinvertebrates that are intolerant of siltation below this point, which is attributable to slower current velocities and a lack of shallow riffles and associated course sediments (Grubbs and Taylor 2004, p. 26). For these reasons, Cave Island was selected as the downstream limit of the critical habitat designation in this unit.

Once we determined the areas of the Elk and Green Rivers that met our criteria, we used ArcGIS software and the National Hydrography Dataset (NHD) to delineate the specific river reaches being designated. These areas include only Elk River and Green River mainstem stream channels within the ordinary high-water line. We set the upstream and downstream limits of each critical habitat unit by identifying landmarks (islands, confluences, roadways, crossings, dams) that clearly delineated each river reach. Stream confluences are often used to delineate the boundaries of a unit for an aquatic species because the confluence of a tributary typically marks a significant change in the size or habitat characteristics of the stream. Stream confluences are logical and recognizable termini. When a named tributary was not available, or if another landmark provided a more recognizable boundary, another landmark was used. In the unit descriptions, distances between the upstream or downstream extent of a stream segment are given in kilometers rounded to one decimal point and equivalent miles. Distances for the Elk River were measured by tracing the course of the stream as depicted by the NHD. Distances for the Green River were measured using river miles as designated by the Kentucky Division of Water, which were generated using the NHD.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features essential for the conservation of the diamond darter. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat. The designation of critical habitat does not imply that streams outside of critical habitat do not play an important role in the conservation of the diamond darter.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R5–ES–2013–0019, on our Web site at *http://www.fws.gov/westvirginiafieldoffice/index.html*, and at the West Virginia Field Office (see **FOR FURTHER INFORMATION CONTACT** above).

Final Critical Habitat Designation

We are designating two units as critical habitat for the diamond darter. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the diamond darter. Those units are: (1) The lower Elk River; and (2) the Green River. Table 1 shows the occupancy of the units and the ownership of the designated areas for the diamond darter.

TABLE 1—OCCUPANCY AND OWNERSHIP OF DESIGNATED DIAMOND DARTER CRITICAL HABITAT UNITS.

Unit	Location	Occupied?	Federal, State, or other public ownership km (mi)	Private ownership km (mi)	Total length km (mi)
1	lower Elk River	yes	45.0* (28.0)	***	45.0 (28.0)
2	Green River	no	16.3 (10.1)	135.8 (84.4)	152.1 (94.5)
Total**					197.1 (122.5)

*As described below, this includes a combination of State ownership and easements. The State considers the easement area under its jurisdiction. These are the best data available to us for calculating river mile ownership in the Elk River. Therefore, we have included this habitat under public ownership.
**Totals may not sum due to rounding.
***None.

We present brief descriptions of each unit and reasons why each unit meets the definition of critical habitat below. The critical habitat units include the stream channels of the rivers within the ordinary high-water line. As defined in 33 CFR 329.11, the ordinary high-water line on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural water line impressed on the bank; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. In West Virginia, the State owns the bed and banks of streams between the ordinary low-water marks, and is vested with a public easement between the ordinary low-water and high-water marks (George 1998, p. 461). The water is also under State jurisdiction (WVSC § 22–26–3). In Kentucky, adjoining landowners also own the land under streams (e.g., the stream channel or bottom) in the designated unit, but the water is under State jurisdiction.

Unit 1: Lower Elk River, Kanawha and Clay Counties, West Virginia

Unit 1 represents the habitat supporting the only remaining occupied diamond darter population. This population could provide a source to repopulate other areas within the diamond darter's historical range. Unit 1 includes 45.0 km (28.0 mi) of the Elk River from the confluence with King Shoals Run near Wallback Wildlife Management Area downstream to the confluence with an unnamed tributary entering the Elk River on the right descending bank adjacent to Knollwood Drive in Charleston, West Virginia. As described above, all the habitat within this unit is under public control or ownership (see table 1 above). The State of West Virginia owns or has a public easement on the streambed and banks of the Elk River up to the ordinary high-water mark (George 1998, p. 461). The water is also publicly owned. The majority of lands adjacent to this unit are privately owned. There are two areas of public land adjacent to the unit: the 3,996-hectare (ha) (9,874-acre (ac)) Morris Creek Wildlife Management Area, which is leased and managed by the WVDNR (2007, p. 9), and Coonskin Park, an approximately 405-ha (1,000-ac) park owned by Kanawha County (Kanawha County Parks and Recreation 2008, p. 1).

Live diamond darters have been documented throughout this unit, including near the towns of Clendenin, Elk View, Blue Creek, Walgrove, Mink Shoals, Reamer Hill, and at sites between Broad Run and Burke Branch. This unit contains space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; and sites for breeding, reproduction, or rearing (or development) of offspring, and is essential to the conservation of the species. Diamond darter habitat assessments have documented that this reach of the Elk River contains 28 riffle-pool transition areas with moderate currents and sand and gravel substrates that are suitable for the diamond darter (PCEs 1 and 2) (Osier 2005, p. 34). Connectivity between these habitats provides access to various spawning, foraging, and resting sites, to allow for larval drift, and promote gene flow (PCE 1). This reach of the Elk River also has a natural flow regime that is relatively unimpeded by impoundment (PCE 3), and has healthy benthic macroinvertebrate populations (PCE 5) (WVDEP 1997, pp. 20–89). However, water quality within this unit is impaired due to high levels of fecal coliform bacteria and iron (PCE 4) (WVDEP 2010, p. 16).

Within this unit, the diamond darter and its habitat may require special management considerations or protection to address threats from resource extraction (coal mining, timber harvesting, and natural gas and oil development); impoundment; water diversion or withdrawals; construction and maintenance projects; stream bottom disturbance from sewer, gas, and water line crossings; lack of adequate riparian buffers; sewage discharges, and non-point-source pollution. Special management to address water quality degradation is particularly important since prolonged water quality impairments can also affect the availability of relatively silt-free sand and gravel substrates (PCE 2) and healthy populations of fish larvae and benthic invertebrates that provide a prey base for the diamond darter (PCE 5).

Unit 2: Green River, Edmonson, Hart, and Green Counties, Kentucky

Unit 2, although it is not currently occupied by the diamond darter, represents the best remaining historically occupied habitat for future diamond darter reintroductions that will improve the species' redundancy, resiliency, and representation essential for its conservation. Unit 2 includes 152.1 km (94.5 mi) of the Green River from Roachville Ford near Greensburg (River Mile 294.8) downstream to the end of Cave Island in Mammoth Cave NP (River Mile 200.3). Approximately 16.3 km (10.1 mi) of this unit is publically owned (see table 1 above) and is contained within the 20,750-ha (51,274.1-ac) Mammoth Cave NP. The remainder of the unit, 135.8 km (84.4 mi), is privately owned. With the exception of the lands owned by Mammoth Cave NP, the lands within the Green River watershed are also privately owned. Through the U.S. Department of Agriculture's (USDA) Conservation Reserve Program (CRP) and other conservation programs, TNC owns or has easements on approximately 794.4 ha (1,962.9 ac) within the watershed, either adjacent to or in close proximity to the river. In addition, WKU owns or manages 1,300 ac (526.1 ha) along the Green River in Hart County as part of the Upper Green River Biological Preserve (WKU 2012, p. 1).

This unit is within the historical range of the species, but is not currently considered occupied. The Green River historically supported approximately 170 species of fish, including the diamond darter. Between 1890 and 1929, diamond darters were recorded from three locations within this unit: adjacent to Cave Island in Edmonson County, and near Price Hole and Greensburg, in Green County.

The Green River is a seventh-order, warmwater stream with a total drainage area of 23,879.7 km^2 (9,220 mi^2). The largely free-flowing 160.3-km (100-mi) section of the Green River from the Green River Dam downstream to its confluence with the Nolin River in Mammoth Cave NP is among the most significant aquatic systems in the United States in terms of aquatic species diversity and endemism. This reach of the Green River currently supports over 150 species of fish and 70 species of freshwater mussels, including 9 federally endangered mussel species, but there is no designated critical habitat in this section of the Green River (Thomas *et al.* 2004, p. 5; USDA 2006, p. 16). Populations of fish species that have similar habitat preferences as the diamond darter, such as the shoal chub and streamline chub are present throughout this reach (Thomas 2012, p. 1).

The entire reach of the Green River within this unit is designated by Kentucky as both Outstanding State Resource Waters and Exceptional Waters. Outstanding State Resource Waters are those surface waters designated by the Kentucky Energy and Environment Cabinet (KYEEC) as containing federally threatened and endangered species. Exceptional Waters are waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, wildlife, and recreation. These waters support excellent fish and macroinvertebrate communities (KYEEC 2012, p. 1). The entire reach of the river within Mammoth Cave NP, including the 16.3 km (10.1 mi) that are designated as critical habitat, is also designated as a Kentucky Wild River. These rivers have exceptional quality and aesthetic character and are designated by the State General Assembly in recognition of their unspoiled character, outstanding water quality, and natural characteristics (KYEEC 2012, p. 1). Each Wild River is actually a linear corridor encompassing all visible land on each side of the river up to a distance of 609.6 m (2,000 ft). To protect the features and quality of Wild Rivers, land use changes are regulated by a permit system, and certain highly destructive land use changes, such as strip mining and clearcutting, are prohibited within corridor boundaries (KYEEC 2012, p. 1).

As described in the Criteria Used To Identify Critical Habitat section above, the inclusion of this unoccupied area is

essential for the conservation of the diamond darter. This area will provide currently suitable habitat for a population reintroduction that will allow expansion of diamond darter populations into historically occupied habitat, adding to the species' redundancy, resiliency, and representation. While not required under section 3(5)(A)(ii) of the Act, this area also contains all of the PCEs. This reach of the Green River is a moderate-to-large warmwater stream with a series of connected riffle-pool complexes that is unaffected by impoundment (PCEs 1 and 3). The reach has good water quality and supports fish species that have similar habitat requirements including clean sand and gravel substrates, low levels of siltation, and healthy benthic macroinvertebrate populations for prey items (PCEs 2, 3, 4, and 5).

The reach of the Green River being designated as critical habitat is the focus of many ongoing conservation efforts. The Nature Conservancy has designated this area as the Green River Bioreserve (Thomas *et al.* 2004, p. 5), and the KYDFWR identified this portion of the Green River as a Priority Conservation Area in its Comprehensive Wildlife Conservation Strategy (USDA 2006, p. 35). Since 2001, more than 40,568.6 ha (100,000 ac) within the watershed have been enrolled in CRP (USDA 2010, p. 3). The goal of this program is to work with private landowners to greatly reduce sediments, nutrients, pesticides, and pathogens from agricultural sources that could have an adverse effect on the health of the Green River system (USDA 2006, p. 16). These organizations along with the Service, KYWA, WKU, Kentucky State University, the ACOE, private landowners, and other partners are also working toward conserving natural resources in this watershed by restoring riparian buffers, constructing fences to keep livestock out of the river, managing dam operations at the Green River Reservoir to more closely mimic natural discharges, and conducting long-term ecological research on fish and invertebrates (Hensley 2012, p. 1; TNC 2012, p. 1; WKU 2012, p. 1). The feasibility of removing Lock and Dam #6 has also been evaluated, but no decision on this proposal has been made yet (Olson 2006, pp. 295–297). There are also a number of ongoing efforts to educate the public on the biodiversity the river supports. These efforts include river cleanups and the establishment of a Watershed Watch program under which volunteers are trained to monitor the biological conditions in the river.

Land use within this watershed is primarily agriculture and forestry and also some oil and gas development. Management may be needed to address resource extraction (timber harvests, natural gas and oil development activities); water discharges or withdrawals; construction and maintenance projects; stream bottom disturbance from sewer, gas, and water line crossings; lack of adequate riparian buffers; sedimentation, sewage discharges, and non-point-source pollution.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with the Service. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the ACOE under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on state, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, or both, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy or destruction or adverse modification of critical habitat, or both. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the diamond darter. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the diamond darter. These activities include, but are not limited to:

(1) Actions that would alter the geomorphology of stream habitats. Such activities could include, but are not limited to, instream excavation or dredging, impoundment, channelization, removal of riparian vegetation, road and bridge construction, discharge of mine waste or spoil, and other discharges of fill materials. These activities could cause aggradation or degradation of the streambed or significant bank erosion, result in entrainment or burial of these fishes, and cause other direct or cumulative adverse effects to the species.

(2) Actions that would significantly alter the existing flow regime or water quantity. Such activities could include, but are not limited to, impoundment, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for growth and reproduction of the diamond darter.

(3) Actions that would significantly alter water chemistry or water quality (for example, dissolved oxygen, temperature, pH, contaminants, and excess nutrients). Such activities could include, but are not limited to, hydropower discharges or the release of chemicals, biological pollutants, or toxic effluents into surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions beyond the tolerances of these fish and result in direct or cumulative adverse effects to the species.

(4) Actions that would significantly alter streambed material composition and quality by increasing sediment deposition or embeddedness. Such activities could include, but are not limited to, certain construction projects, oil and gas development, mining, timber harvest, and other watershed and floodplain disturbances if they release sediments or nutrients into the water. These activities could eliminate or reduce habitats necessary for the growth and reproduction of these fish by causing excessive siltation or nutrification.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: "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 [INRMP] 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." There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. The statute on its face, as well as the legislative history, is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor in making that determination.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. To consider economic impacts, we prepared a DEA of the proposed critical habitat designation and related factors (Industrial Economics Inc. 2013a, entire). The draft analysis, dated February 27, 2013, was made available for public review from March 29, 2013, through April 29, 2013 (78 FR 19172). Following the close of the comment period, a final analysis (dated June 2013) of the potential economic effects of the designation (FEA) was developed taking into consideration the public comments and any new information (Industrial Economics Inc. 2013b, entire).

The intent of the FEA is to quantify the economic impacts of all potential conservation efforts for the diamond darter. The economic impact of the final critical habitat designation is analyzed by comparing scenarios "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., listing under the Act as well as other Federal, State, and local authorities). The baseline therefore represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species, and which are not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs. These are the costs we consider in the final designation of critical habitat. The FEA looks at baseline impacts occurring due to listing

the species, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks at costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe. The FEA quantifies economic impacts of diamond darter conservation efforts associated with the following categories of activity: (1) Resource extraction (coal mining, gravel and rock mining, and oil and natural gas exploration) and utilities; (2) timber management, agriculture, and grazing; (3) other instream work (dredging, channelization, diversions, dams, instream construction of boat docks, etc.); (4) transportation (roads, highways, bridges); and (5) water quality/sewage management.

The FEA concludes that the types of conservation efforts requested by the Service during section 7 consultation regarding the diamond darter were not expected to change due to critical habitat designation. The results of consultation under the adverse modification and jeopardy standards are likely to be similar because there is a close relationship between the health of the diamond darter and the health of its habitat. Alterations of habitat that diminish the value (e.g., actions that alter hydrology, water quality, or suitability of substrate) and the amount of diamond darter habitat would likely affect its population size and ability to recruit young, would likely cause further range declines, and could appreciably reduce the species' likelihood of survival and recovery in the wild. Such habitat alterations could, therefore, constitute jeopardy to the species. In most cases, the results of consultation on projects in occupied diamond darter habitat under the adverse modification and jeopardy standards are likely to be similar because the diamond darter's entire life history is reliant on the presence of all the PCEs being present within one contiguous stream reach. Thus, project modifications that minimize impacts to the species to avoid jeopardy would coincidentally minimize impacts to critical habitat.

In addition, although one of the critical habitat units for the diamond darter is unoccupied, incremental impacts of the critical habitat designation will be limited because the unit is currently occupied by nine federally endangered mussels. Management recommendations made to avoid adverse effects during previous mussel consultations included using enhanced sedimentation and erosion control measures, avoiding water quality degradation through the use of spill and run-off prevention and control measures, avoiding instream disturbances through the use of project alternatives such as directional drilling, conducting project activities away from the river, and minimizing disturbances to and fill of lands adjacent to the river and stream tributaries. These recommendations are similar to the types of management recommendations that would be used to avoid adverse modifications to diamond darter critical habitat.

The FEA concludes that incremental impacts of critical habitat designation are limited to additional administrative costs of consultations and that indirect incremental impacts are unlikely to result from the designation of critical habitat for the diamond darter. The present value of the total direct (administrative) incremental cost of critical habitat designation is $800,000 assuming a 7 percent discount rate, or $70,000 on an annualized basis. Transportation activities are likely to be subject to the greatest incremental impacts at $320,000 over 20 years, followed by timber management, agriculture, and grazing activities collectively at $260,000; resource extraction activities at $150,000; other instream work at $50,000; and water quality/sewage management at $18,000. These numbers represent present value at a 7 percent discount rate and may not total due to rounding.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exerting his discretion to exclude any areas from this designation of critical habitat for the diamond darter based on economic impacts.

A copy of the FEA with supporting documents may be obtained by contacting the West Virginia Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov*.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this final rule, we have determined that no lands within the designation of critical habitat for the diamond darter are owned or managed by the Department of Defense, and therefore we anticipate no impact on national security. Consequently, the Secretary is not exerting her discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether any conservation partnerships would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no HCPs or other management plans for the diamond darter, and the final designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this critical habitat designation. Accordingly, the Secretary is not exercising his discretion to exclude any areas from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. The E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the RFA (5 U.S.C. 601 *et seq.*), as amended by SBREFA of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must 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 (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. 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. In this final rule, we are certifying that the critical habitat designation for the diamond darter will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

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; as well as small businesses. 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 on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the 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 rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., resource extraction; timber management, agriculture, and grazing; instream activities; transportation; and water quality and sewer management). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether the activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the diamond darter. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the "Adverse Modification Standard"* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the diamond darter and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 3 through 4 and Appendix A of the analysis and evaluates the potential for economic impacts from resource extraction; timber management, agriculture, and grazing; instream activities; transportation; and water quality and sewer management.

We determined from our analysis (Appendix A in FEA) that there will be minimal additional economic impacts to small entities resulting from the designation of critical habitat, because almost all of the potential costs related to modification of activities and conservation that were identified in the economic analysis represent baseline costs that would be realized in the absence of critical habitat. The economic analysis estimates that approximately 245 small entities may be affected over the next 20 years. This equates to fewer than 13 entities affected per year. The large majority of these affected entities (190 or 82 percent) are agriculture and timbering entities in Kentucky that receive assistance through the NRCS. Participation in NRCS assistance programs is voluntary. The remaining 68 potentially affected small entities are associated with resource extraction and other instream work. This equates to an average of fewer than four affected small entities per year. The FEA estimates incremental costs of between $880 and $8,800 per affected entity engaging in resource extraction or other instream work; this cost equals an impact of less than 0.1 percent to each entity's annual revenue. All of these costs are derived from the added effort associated with considering adverse modification in the context of section 7 consultations.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available data, we conclude that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the diamond darter will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The OMB has provided guidance for implementing this E.O. that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration. The FEA considered the potential effects of the diamond darter critical habitat designation on coal, oil, and gas development. The FEA found that some limited impacts to these energy development activities are anticipated, but they will mostly be limited to the administrative costs of consultation. Therefore, reductions in energy production are not anticipated, and consultation costs are not anticipated to increase the cost of energy production or distribution in the United States in excess of one percent. None of the nine outcome thresholds of impact are exceeded, and the economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with diamond darter conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments. The FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for projects in the following categories that have a Federal nexus: resource extraction; timber management, agriculture, and grazing; instream activities; transportation; and water quality and sewer management. Small governments will be affected only to the extent that they must ensure that their actions that involve Federal funding or authorization will not adversely affect the critical habitat. This rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the diamond darter in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The takings implications assessment concludes that this designation of critical habitat for the diamond darter does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in West Virginia and Kentucky. We received comments from the State of West Virginia and have addressed them in the Summary of Comments and Recommendations section of the rule. The designation of critical habitat in areas currently occupied by the diamond darter imposes no additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the PBFs essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the

conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Executive Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of PBFs essential to the conservation of the diamond darter. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands occupied by the diamond darter at the time of listing that contain the PBFs essential to conservation of the species, and that there are no tribal lands unoccupied by the diamond darter that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the diamond darter on tribal lands.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, West Virginia Field Office (see **ADDRESSES** section).

Author(s)

The primary author of this document is staff from the West Virginia Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transporfation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 16 U.S.C. 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for "Darter, diamond" under "Fishes" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
FISHES							
•	•	•	•	•	•		•
Darter, diamond	*Crystallaria cincotta*	U.S.A. (IN, KY, OH, TN, WV)	Entire	E	815	17.95(e)	NA
•	•	•	•	•	•		•

■ 3. In § 17.95, amend paragraph (e) by adding an entry for "Diamond Darter (*Crystallaria cincotta*)," in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Diamond Darter (*Crystallaria cincotta*)

(1) Critical habitat units are depicted for Kanawha and Clay Counties, West Virginia, and Edmonson, Hart, and Green Counties, Kentucky, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of diamond darter consist of five components:

(i) A series of connected riffle-pool complexes with moderate velocities in moderate- to large-sized (fourth- to eighth-order), geomorphically stable streams within the Ohio River watershed.

(ii) Stable, undisturbed sand and gravel stream substrates that are relatively free of and not embedded with silts and clays.

(iii) An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) that is relatively unimpeded by impoundment or diversions such that there is minimal departure from a natural hydrograph.

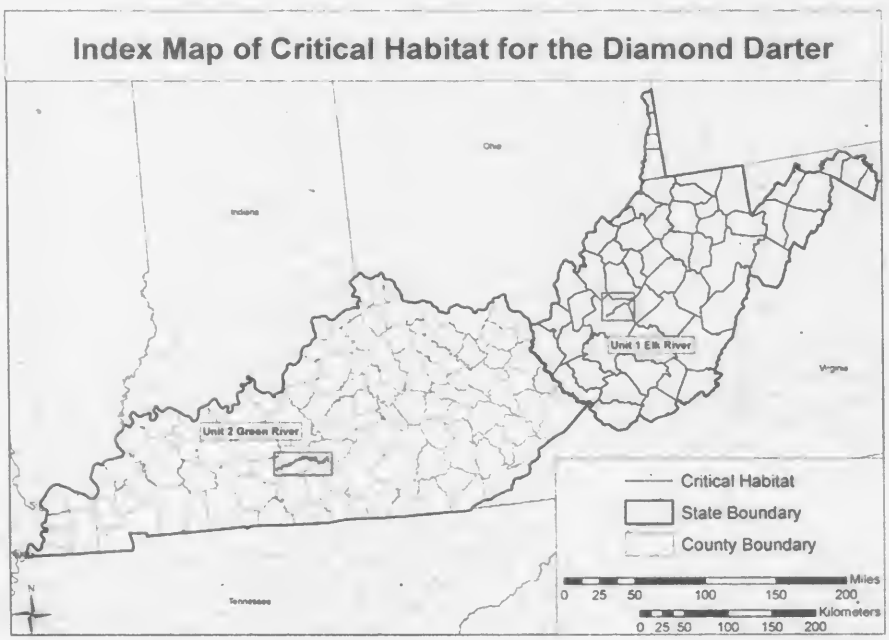
(iv) Adequate water quality characterized by seasonally moderated temperatures, high dissolved oxygen levels, and moderate pH, and low levels of pollutants and siltation. Adequate water quality is defined as the quality necessary for normal behavior, growth, and viability of all life stages of the diamond darter.

(v) A prey base of other fish larvae and benthic invertebrates including midge, caddisfly, and mayfly larvae.

(3) Critical habitat does not include manmade structures (such as bridges, docks, aqueducts and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created with U.S. Geological Survey National Hydrography Dataset Geographic Information System data. Esri's ArcGIS 10.1 software was used to determine longitude and latitude in decimal degrees for the river reaches. The projection used in mapping was Universal Transverse Mercator (UTM), NAD 83, Zone 16 North for the Green River, Kentucky, unit; and UTM, NAD 83, Zone 17 North for the Elk River, West Virginia, unit. The following data sources were referenced to identify features used to delineate the upstream and downstream reaches of critical habitat units: USGS 7.5′ quadrangles and topographic maps, NHD data, 2005 National Inventory of Dams, Kentucky Land Stewardship data, pool and shoal data on the Elk River, Esri's Bing Maps Road. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the field office Internet site (*http://www.fws.gov/westvirginiafieldoffice/index.html*), *http://www.regulations.gov* at Docket No. FWS–R5–ES–2013–0019, and at the Service's West Virginia Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

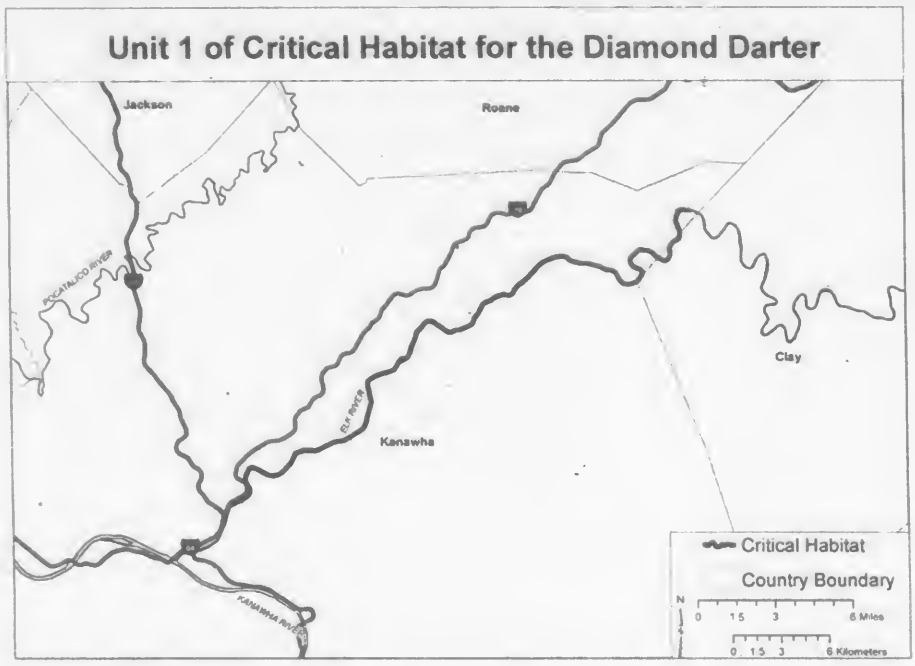
(5) *Note:* Index map of critical habitat locations for the diamond darter in West Virginia and Kentucky follows:



(6) Unit 1: Lower Elk River, Kanawha and Clay Counties, West Virginia.

(i) Unit 1 includes 45.0 km (28.0 mi) of the Elk River from the confluence with King Shoals Run near Wallback Wildlife Management Area downstream to the confluence with an unnamed tributary entering the Elk River on the right descending bank adjacent to Knollwood Drive in Charleston, West Virginia.

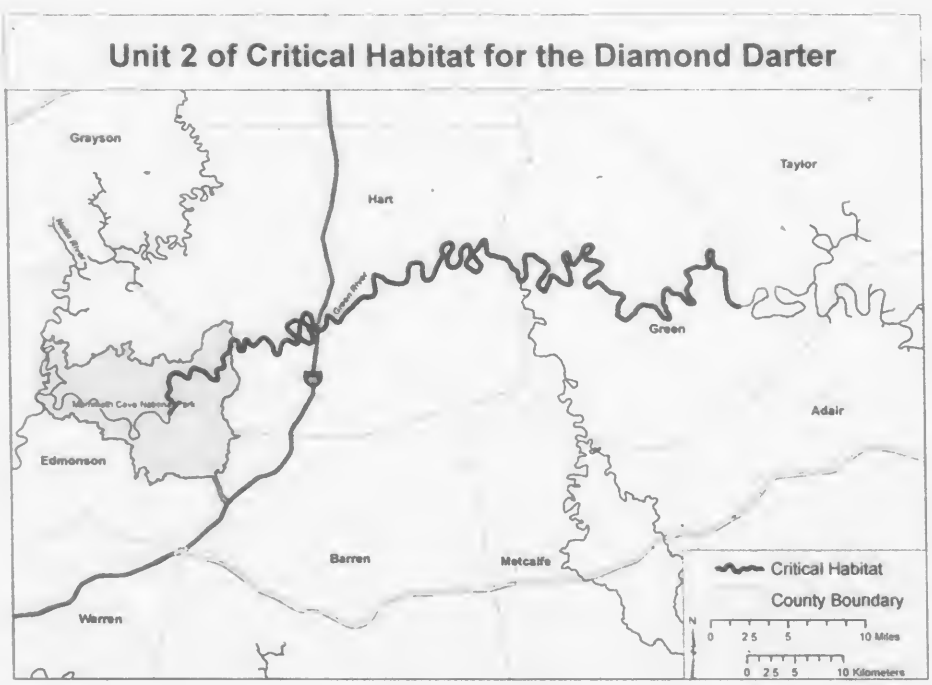
(ii) Note: Map of Unit 1 (lower Elk River) follows:



(7) Unit 2: Green River, Edmonson, Hart, and Green Counties, Kentucky.

(i) Unit 2 includes 152.1 km (94.5 mi) of the Green River from Roachville Ford near Greensburg (River Mile 294.8) downstream to the downstream end of Cave Island in Mammoth Cave National Park (River Mile 200.3).

(ii) Note: Map of Unit 2 (Green River) follows:



* * * * *

Dated: August 6, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–20449 Filed 8–21–13; 8:45 am]

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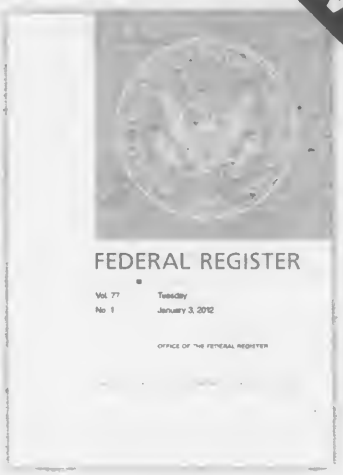

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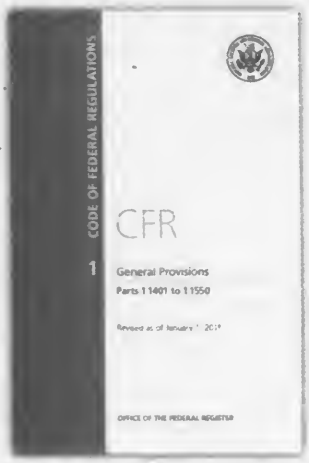

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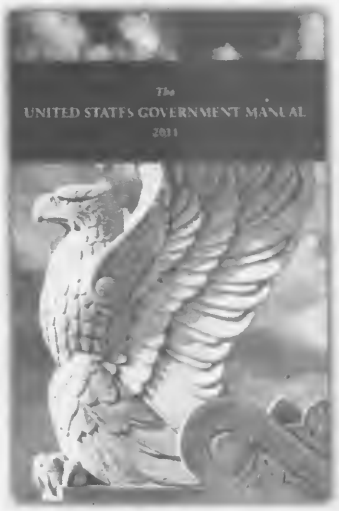

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